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# THE RIGHT TO EDUCATION OF ASYLUM-SEEKING MINORS

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CASE STUDY SERBIA

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03.09.2019*

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## Case Study Serbia

Von der Pädagogischen Hochschule Freiburg zur Erlangung des Grades eines Doktors der  
Philosophie (Dr. phil.) genehmigte Dissertation

Von

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Novi Sad, Serbien

Promotionsfach: Soziologie

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Tag der mündlichen Prüfung: 03. März 2020

## Acknowledgements

Foremost, I would like to express my eternal gratitude to my PhD mentor, Prof. Dr. Albert Scherr, for his trust in me and my research proposal back in Spring 2015 when I contacted him with a kind request to supervise my research, and for choosing me to be one of his students. I feel blessed to have found such an expert, who has provided his unconditional support throughout the whole process. Not only did he provide his expertise and valuable advice whenever I needed it, but he also supported me in my professional engagements and, among other things, wrote recommendation letters. One of which secured me the Erasmus + Traineeship scholarship and excellent academic position with the Vienna Master of Arts in Human Rights at the University of Vienna. I could not have imagined having a better mentor and for this I stay eternally deeply indebted.

In addition, I would also like to thank Prof. Dr. Uwe Bittlingmayer, who acted in a supervisor capacity as well. He took the time to see me when I needed him and for his valuable and insightful comments and guidance. Many thanks go to Dr. Gökçen Yüksel from the University of Education Freiburg for all her assistance, kindness and warmth.

My sincere thanks also go to Dr. Snežana Vuković from the Ministry of Education in Serbia for the many materials and documents she has provided, for her trust in my research work and unreserved support. In relation to that, I would like to thank Ivana Cenerić from Serbia's Centre for Education Policy, who, together with Dr. Vuković, granted me access to schools involved in the process of the inclusion of ASMs in education system.

Immense gratitude goes to Ms. Mira Nikolić Aleksić, deputy director and math teacher in primary school "Jovan Ristić" in Borča, for her availability and help in completing this project. She allowed me to collect data on the ground through interviews with her, her staff and students, in particular ASMs. She also lended her approval for me to be present as an observer during the lectures.

Furthermore, I would like to thank Mr. Nenad Ćirić, director of the primary school for education of adults, "Branko Pešić", for an in-depth interview, approval of my visit and observation mission as well as the possibility to conduct interviews with school staff and ASMs.

I thank for their great contribution in the field data collection process to Ms. Dragana Rajić, consultant at the Commissariat for refugees and migration, Ms. Đurđa Surlan, director of Krnjača refugee camp, Ms. Marina Todić, pedagogist in the primary school "Rade Drainac," Ms. Valentina Pandeita, director of the primary school "Jovan Cvijić," Ms. Kristina Limić, pedagogist at High School for Textile Design, and Ms. Branka Damjanović, director of the primary school for education of adults "Đuro Salaj." Special thanks go to ASMs for their contribution to this research project. It is for their welfare that this work is devoted to.

This list of thanks is not an exhausting list, as it is hard to name all the good people, devoted school staff, staff of refugee camps, and NGOs, that I have interviewed over the period of four years.

Therefore, I extend my thanks to all concerned persons who cooperated with me in this regard.

I submit my heartiest gratitude to my traineeship supervisor at the Vienna Master in Human Rights, Mag. Marijana Grandits, for her academic advice and guidance that have greatly enriched my dissertation as well as for her understanding and support, granting me free days so that I could take care of my PhD work and provide care for my daughter whenever she needed me. For this personal and professional growth I thank the whole team, including our master programme student, Kaitlyn Rice, for her valuable comments and proofreading services.

Finally, and most importantly, I would like to thank my mother, Goca, for her unconditional love and support. Without her support none of this would be possible. To my dad, Dragiša, and my brother, Ivan, who has always been my role-model and who has made sure I got this far. I thank my parents in law, Mile and Nena, especially my mother in law, Nena, for all her visits to take care of my daughter while I was working on my dissertation, and who even accompanied me on my field trips during the breastfeeding period. Thank you to my mom and Aunt Mira for babysitting as well, for all the support and love these three women provided like only moms can give.

Some special words of gratitude go to my sisters and brother in law Nina, Gaga and Stef, and to all my family members including my best friends Jelena, Daka and Sale for their support, enthusiasm and pride.

Last but not the least, my heart knows no bounds in expressing my cordial gratitude to my husband Mićo. He has been and continues to be my main pillar of support. I thank him for this and for all his love and faith, for starting a family with me and welcoming our first child, Helena. Helena, you are my inspiration and eternal sunshine.

## Abstract

At the time of the outbreak of the so-called *refugee crisis*, only the non-governmental sector in Serbia responded to the situation by providing assistance to any people in need. The respective activities that were carried out consisted mostly of humanitarian aid, medical assistance, and providing both psycho-social and legal-informative support. Starting in 2015, the attention grew and shifted to providing better care of asylum-seeking minors. However, it was only in late 2016 that the Republic of Serbia started a project related to inclusion of Asylum-Seeking Minors (ASMs) into its education system. The project's results in 2017 were still modest, since only approx. 60 asylum seeking minors out of 3031 were included in Serbia's education system. In the school year 2018/2019, in particular until February 2019, 98,22 percent of preschool-aged or elementary-school-aged ASMs who were placed in reception centers were included in the education system.

This PhD research project represents the study of how the basic human right, the right to education, is granted in a country perceived as a transit country by both, ASMs and domestic authorities. It represents a human rights-based approach to education and integration, which should contribute to empowerment of the right-holder, i.e. asylum-seeking minors, and accountability of the duty-bearer.

In order to assess the government's success in granting the right to education, its obligation to respect, protect and fulfil human rights, was linked with the human rights framework for education. Furthermore, the way the country's political determination to join the EU, existing social, cultural, and political factors in the country as well as the insufficient asylum system affect the right to education of ASMs were examined.

Apart from the empowerment of the right-holder and identification of the potential improvements on the governments side, one of the aims of the research was to identify *examples/elements of good practice* in Serbian aspect. This is used as an argument for (un)successful implementation of the right to education, since schools are the ones directly implementing adopted legislation, strategies and policies, and therefore reveal potential lack of political willingness to implement them or the false intentions of the state on the way it presents itself before the international community.

Therefore, elements of good practice were identified and one of the central findings with respect to providing the right to education for ASMs, is that Serbia, and, more specifically, its dedicated educators and NGO staff, have done an applaudable job. Though room for improvement remains, the efforts of the state, school personnel, family members of ASMs and caring NGO workers have made the right to education a reality for ASMs who seek it.

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## Abbreviations

ASM – asylum-seeking minor  
BCHR – Belgrade Center for Human Rights  
CEAS - Common European Asylum System  
CESCR - United Nations Committee on Economic, Social and Cultural Rights  
CZA/APC – Centar za zaštitu i pomoć tražiocima azila / Asylum Protection Center  
COP/CEP - Center for Education Policy  
CRM/Commissariat - Commissariat for Refugees and Migration  
ECHR- European Convention for the Protection of Human Rights and Fundamental Freedoms  
ECtHR – European Court for Human Rights  
EU- European Union  
FYROM – Former Yugoslav Republic of Macedonia  
FRONTEX - the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union  
GAPA - General Administrative Procedure Act  
HRBA – Human Rights Based Approach  
ICCPR – International Covenant on Civil and Political Rights  
ICESCR - International Covenant on Economic, Social and Cultural Rights  
ILO – International Labour Organization  
IMF- International Monetary Fond  
IRK - Interdepartmental Commission  
LA – Law on asylum  
LATP- Law on Asylum and Temporary Protection  
LBES - Law on the Basis (Fundamentals) of the Education System  
Ministry of Education - Ministry of Education, Science and Technological Development of the Republic of Serbia  
MOI – Ministry of Interior  
PPP- Preparatory Pre-school Programmes  
RS – Republic of Serbia  
RSD – Republic Serbia Dinar  
RTC – Reception / Transit Centers  
SEEA – School for Elementary Education of Adults  
STIO teams - Expert team for inclusive education in school  
UN- United Nations  
UDHR – Universal Declaration of Human Rights  
UNESCO - United Nations Educational, Scientific and Cultural Organization  
UNICEF - United Nations International Children's Emergency Fund

## Introduction

Almost half of the world's forcibly displaced population is made up of children, many of whom spend their entire childhood far from home.<sup>1</sup> Children are by their very nature inexperienced and vulnerable to adult persuasions, hence, regardless of being refugees, internally displaced, asylum-seekers or stateless, children are at a greater risk of abuse, neglect, violence, exploitation, human trafficking or forced military recruitment. Furthermore, they may end up being separated from their families while on dangerous paths to a safer home and consequently expose themselves to any one of the afore-mentioned risks.

There are 70.8 million forcibly displaced people worldwide, among them there are nearly 25.9 million refugees, over half of whom are under the age of 18.<sup>2</sup> Moreover, the so far confirmed trend shows that the numbers on asylum-seeking minors is constantly on the rise.<sup>3</sup> More than a million migrants and refugees crossed into Europe in 2015, triggering the so-called *refugee crisis*. The term "crisis" is being used as countries struggled to cope with the influx, which further created division in the European Union (EU) over how best to deal with resettling people.

During 2015, the number of children who applied for asylum in EU member states jumped from 144,550 (2014) to 337,000.<sup>4</sup> Even though there are some major data gaps provided by Eurostat, the figures still indicate that at least 29 per cent of these children were ASMs seeking refuge in Europe.

In 2015, over 3,000 children requested asylum in Serbia, whereas over 1,300 of them were children without parental escort. However, it is not known how many children are staying or how many are transiting through the country without requesting asylum. One cause for the uncertainty in numbers is that some become victims of smugglers, who take advantage of children's vulnerability. The Director of the Center for Protection and Assistance to Asylum Seekers, Radoš Đurović, noted that most of the children do not reach asylum centers and are simply missing from the statistics, which constitutes reason for serious concern. He added that unaccompanied asylum-seeking children have nowhere to be placed, hence they are referred to the centers with other, adult asylum seekers. With no center dedicated to processing unaccompanied asylum-seeking children, these youths are left in even more vulnerable positions, and it renders the asylum procedure inept at dealing with these children.

In 2017, 650 thousand first-time asylum seekers applied for international protection in the Member States of the EU, whereas nearly 31 per cent of the total number were minors aged less than 18

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<sup>1</sup> UNHCR (a), at <http://www.unhcr.org/pages/49c3646c1e8.html> (last consulted on 15.08.2019).  
UNHCR (c), 2012, p.7.

<sup>2</sup> UNHCR (e), at <http://www.unhcr.org/figures-at-a-glance.html> (last consulted on 15.08.2019).  
ENOC, 2016, p. 1.

<sup>3</sup> ENOC, 2016, p.10, ft36: Based on interviews in Geneva on 14-15 December 2015 with advisers from UNICEF, UNHCR; Save the Children, OHCHR, Terre des Homme, IOM and ICRC.

<sup>4</sup> ENOC, 2016, p. 1.

years.<sup>5</sup> In December 2017, there was total of 1,444 ASM present in Serbia and they made 34 per cent of total refugee and migrant population, 94 per cent of whom were accommodated in state reception and accommodation centers, including 279 unaccompanied asylum-seeking children.<sup>6</sup>

The only ways to reach Europe legally is through family reunification, or resettlement, where displaced individuals in clear need of international protection are transferred to a safe country on submission of the UNHCR.<sup>7</sup> Eventually, humanitarian visas provide another legal entry channel, however they are only used on an exceptional basis.<sup>8</sup>

Since there are no internal borders in the EU, the asylum process requires harmonized regulation at the EU level.<sup>9</sup> Therefore, the EU has developed the Common European Asylum System (CEAS), which has earned itself the name, *Fortress Europe*. With the adoption of the *safe third country* rule, it has unilaterally incorporated third countries outside their legal and political domain into their system of redistribution for handling asylum claims. Put simply, many EU member states have drawn up *re-admission agreements* with Eastern and Central European nations to facilitate the *safe third country* rule.

Therefore, because ASMs lack legal opportunities to enter the EU and apply for asylum, almost all of them opt for the use of irregular routes, typically facilitated by smugglers, to reach Europe.<sup>10</sup> Their path to the EU varies: some arrive via land routes from Eastern European states to neighboring EU member states, but most cross the Mediterranean on small boats, primarily from Turkey to Greece, but also from Northern Africa to Italy.<sup>11</sup>

Legislation like this has the potential to lead to a chain of pushbacks. One particular pushback is that a person in need of international protection could be returned to the point from where they started their journey. Not only is this practice a breach of International Refugee Laws, but International Human Rights Laws as well.

Even though more than 1,011,700 migrants arrived by sea in 2015, and almost 34,900 by land, diligent interception in the Mediterranean under the supervision of Frontex (the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union) steered the migrant route to the Balkans.<sup>12</sup>

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<sup>5</sup> EUROSTAT, at [https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics#Age\\_and\\_gender\\_of\\_first-time\\_applicants](https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Age_and_gender_of_first-time_applicants) (last consulted on 27.09.2018).

<sup>6</sup> UNICEF (d), at <https://www.unicef.org/eca/what-we-do/emergencies/latest-statistics-and-graphics-refugee-and-migrant-children> (last consulted on 27.09.2018).

<sup>7</sup> ENOC, 2016, p.11.

<sup>8</sup> ENOC, 2016, p. 12.

<sup>9</sup> European Asylum Support Office, 2016, p. 13.

<sup>10</sup> ENOC, 2016, p. 1.

<sup>11</sup> ENOC, 2016, p. 1.

<sup>12</sup> BBC, at <https://www.bbc.com/news/world-europe-34131911> (last consulted 15.08.2019).

However, Balkan countries closed their borders in 2015 to anyone but those coming from Syria, Afghanistan or Iraq.<sup>13</sup> Allegedly, migrants traveling from one of these three countries were reportedly traveling towards more northern European countries like Germany and Sweden.<sup>14</sup>

Serbia was selected for the case study because it is on the route that migrants have been using. Additionally, ever since the closure of the Balkan route in 2016, it became clear that a certain number of asylum seekers would stay in Serbia. Furthermore, it is on its road to becoming an EU member, hence much regarding harmonization needs to be done in order to reach EU standards.

This PhD research project records the current situation in Serbia with respect to legislation on education-related issues for asylum-seeking minors in Serbia. It also observes the actions and programmes proved to be *examples of good practice*, not only to depict the educational profile of asylum-seeking minors, but also to provide an insight into the problems they face as they enter the public education system of the host country. The goal is that the educational system can be improved and contribute to empowerment of the right-holder, i.e. asylum-seeking minors. On the other hand, the research project should lead to accountability of the duty-bearer, i.e. Serbia, in light of the state's obligations and duties under international law to respect, to protect and to fulfil human rights.

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<sup>13</sup> ENOC, 2016, p. 15.

<sup>14</sup> ENOC, 2016, p. 13.

# Methodology

## Problem Setting

In 2015, the Commissariat for Refugees and Migration noticed the inflow of some 10,000 asylum seekers on a daily basis. These asylum seekers were typically only transiting through Serbia or remained on its territory for up to three days. However, in spring 2016, the Balkan route was officially closed, which led to more and more people being trapped inside Serbia's borders. In April 2017, there were 8,000 asylum seekers placed in refugee camps all around the state, even though the official capacity is 6,000. Unofficially, more asylum seekers are out in the open, but the number reportedly reaches 1,500. The majority of this transient population could be seen in the park near the Belgrade bus station or living in terrible conditions in the so-called "barracks" near the Belgrade bus station.

Perhaps the most interesting of these figures is that 50 percent of the population is made up of ASMs. Hence, in April 2017, there were 2,904 ASMs and only 50 to 60 were included in the Serbian education system.

Therefore, this PhD research project represents the study of how the basic human right, the right to education, is granted in a transit country. It will do this through analysis of international and domestic legal standards, domestic social conditions as well as the host country's political determination to join the EU.

In other words, the state is obligated to respect, to protect and to fulfil human rights. Challenging these obligations though is the fact that the state must also manage migration flow, especially because migration is a highly contested issue on the agendas of the political decision makers in Brussels. This means that improvements in this area represent one of the prerequisites for further negotiation on joining EU.

Therefore, at the time of development of my PhD project, i.e. in mid-2014, there were 13 million refugees according to the UNHCR, whereas the number of Syrian child refugees surpassed 1.7 million in March 2014.<sup>15</sup> Five years later, the figures have reached 25.4 million refugees and 3.1 million asylum seekers worldwide.<sup>16</sup>

Over half of these figures are made up of children who are under the age of 18.<sup>17</sup> Moreover, more than one third of the world's refugee children are missing out on primary education.<sup>18</sup> More

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<sup>15</sup> O'Rourke, 2014-2015, p. 712.

UNICEF (1a), 2014, p. 1.

UNHCR (b), at <http://www.unhcr.org/pages/49c3646c1d.html> (last consulted on 22.11.2015).

<sup>16</sup> UNHCR (e), at <http://www.unhcr.org/figures-at-a-glance.html> (last consulted on 27.09.2018).

<sup>17</sup> UNHCR (e), at <http://www.unhcr.org/figures-at-a-glance.html> (last consulted on 27.09.2018).

<sup>18</sup> UNICEF (1b), at [http://www.unicef.org/education/bege\\_61685.html](http://www.unicef.org/education/bege_61685.html) (last consulted on 28.11.2015).

worryingly, children are not always recognized as full bearers of human rights.<sup>19</sup> Hence, the human rights situation of asylum-seeking minors represents an area of concern that deserves specific attention.<sup>20</sup>

### Theoretical Framework

This is a human rights-based approach to education and integration, which should contribute to empowerment of the right-holder, i.e. asylum-seeking minors, and accountability of the duty-bearer, i.e. the government of the Republic of Serbia. Field research was conducted by using the Grounded Theory Method. This enabled collection of the data, critical analysis of that same data, the development of the dissertation's main theory, which was grounded in the data. In other words, it enabled me to carry out my research in the time of the outbreak of the so-called *refugee crisis*, at which time there were no existing theories, and, if there were any, they were limited with respect to the right to education of asylum-seeking minors in a transit country, i.e. Serbia.

In particular, Grounded Theory is among the most accepted research methods in social science, which was just introduced to me when I enrolled PhD studies at the Institute of Sociology at the University of Education Freiburg. Quickly I have realized the benefit of the same, since it enables a researcher to develop a theory and contribute to the social science, without just confirming or rejecting already existing theories. However, additional effort needed to be invested in order to understand the application of the same on my research work.

Therefore, I reached for the Grounded Theory related literature and its founders, and came upon the Glaser - Strauss or Corbin -Strauss approach to be the classic ones, but came to know that every implementation of Grounded Theory is different and that there were consequently as many variations of it.<sup>21</sup>

As for me, I was aware of the flow of academic research: One defines the problem or research question, “understand[s] what data is required to be able to obtain a comprehension of the issues involved, produce[s] a data acquisition plan, access[es] and manage[s] the data, process[es] it appropriately, seek[s] more data if required, and then interpret the results.”<sup>22</sup>

However, there was the whole structure behind academic research that needed to be named and applied. In particular, the research paper should contain the problem statement, which contains information about why it matters. Furthermore, one needs to define their theoretical framework, or in other words, the specific lenses that one would be wearing during the research. Theoretical

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<sup>19</sup> Muižnieks, Nils, available at <http://www.coe.int/en/web/commissioner/-/protecting-children-s-rights-europeshould-do-more?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fcommissioner%2Fthematic-work%2Fchildrenrights> (last consulted on 16.12.2015).

Crock, E. Mary, 2013, p.34

<sup>20</sup> Council of Europe, at <http://www.coe.int/en/web/commissioner/thematic-work/children-rights> (last consulted on 15.08.2019).

<sup>21</sup> Remenyi, 2013-2014, p. 38.

<sup>22</sup> Remenyi, 2013-2014, p. xi.



framework actually demonstrates an understanding of theories and concepts that are relevant to one's topic.

On the other hand, in the academic research, method and theory need to be described thoroughly. The latter represents a set of ideas that help the researcher explain a particular social phenomenon, whereas the former represents a research tool, or how we gather the data.<sup>23</sup>

Eventually, there is the term, "hypothesis," a testable prediction about the relationship between two or more variables.<sup>24</sup> A hypothesis requires the distinction between inductive and deductive research. Inductive research starts with observation that then leads to a theory, whereas deductive starts with a theory that helps one form their hypothesis that they then confirm or reject through the research.<sup>25</sup>

Since the research used throughout this document is qualitative research, the term "qualitative methodology" needs to be addressed as well. Qualitative methodology is the process of researching the phenomenon that is based on an interpretative, philosophical basis.<sup>26</sup> In other words, it is based on methods of data collection that are flexible and sensitive to the social context in which the research is being carried out in. The methods of analysis and construction that lead to the development of explanations include an understanding of the complexity, details, and context.<sup>27</sup>

Research techniques that are used here perform their role directly in the hands of researchers, for instance unstructured observation with participation of the researcher as well as unstructured interviews, hence communication between the researcher and individuals in the research situation is of great importance for data collection.<sup>28</sup> Basically, the researcher is a key research tool, since they directly recognize the social world.<sup>29</sup>

Furthermore, qualitative research is focused on an inductive data analysis and inductive hypothesis creation, rather than deductive analysis and empirical testing and verification of the hypothesis.<sup>30</sup> The research is based on an interpretative paradigm with an emphasis on understanding situations, processes, relationships, etc. from the perspective of the participants themselves.<sup>31</sup>

The researcher is immersed in collected data and constantly communicates with the same. The researcher may also develop a specific relationship with the participants of the research that is maintained throughout the data analysis.<sup>32</sup>

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<sup>23</sup> David Russel on Inductive vs Deductive Research, available at [https://www.youtube.com/watch?v=QB41z6\\_mUxk](https://www.youtube.com/watch?v=QB41z6_mUxk) (last consulted on 15.08.2019).

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Jedjud, 2007, p. 84.

<sup>27</sup> Jedjud, 2007, p. 84.

<sup>28</sup> Jedjud, 2007, p. 84.

<sup>29</sup> Jedjud, 2007, p. 85.

<sup>30</sup> Jedjud, 2007, p. 85.

<sup>31</sup> Jedjud, 2007, p. 85.

<sup>32</sup> Jedjud, 2007, p. 85.

Nevertheless, Grounded Theory represents a research method developed by two American sociologists, Glaser and Strauss, in the mid-60s of the last century.<sup>33</sup> Initially named the Constant Comparative Method.<sup>34</sup> What is now known as Grounded Theory is of particular relevance for this research project. Grounded Theory is the process of generating, creating a theory from data, e.g. its foundation in the data.<sup>35</sup> The theory develops during the ongoing research process through a continuous process of dynamic interaction between collecting and analyzing data by the constant comparative method.<sup>36</sup>

Author Corbin advocates that grounded theory is a kind of activism where the creation of a theory makes a significant difference in the lives of people whose life situation is being explored, hence the theory itself is the basis for social action.<sup>37</sup> “Grounded theory can be presented either as a well-codified set of propositions or in a running theoretical discussion, using conceptual categories and their properties.”<sup>38</sup> Regardless the form of theory, and it being grounded or logical-deductive, it is a theory because of its ability to explain and predict something.<sup>39</sup>

Moreover, grounded theory has various elements, one of them being “category,” which is a conceptual element of the theory.<sup>40</sup> Relevant categories that have emerged during my research were asylum-seeking minors, international and domestic legal standards on the education and protection of asylum-seeking minors, CEAS, asylum system in Serbia, Serbian education system and schools admitting asylum-seeking minors.

However, crucial terms to understand the Grounded Theory are constant comparative method, theoretical sampling and coding.

Theoretical sampling means the process of data collection for generating theory whereby the researcher collects, codes and analyzes the data. They then decide what to collect next and where to find that data in order to develop a theory.<sup>41</sup> It usually requires simultaneous reading of documents, conducting interviews, and conducting observation, since all these data are relevant.<sup>42</sup>

In particular, at the beginning of the research, the interviews consist of open-ended conversations, during which respondents are allowed to talk without time restriction.<sup>43</sup> The researcher usually listens and poses questions afterwards, which are directed at their emerging theory.<sup>44</sup> With this open-ended interviews like these, the researcher’s questions are answered sufficiently and fairly quickly.<sup>45</sup> By using this method, the interview time decreases for every next interview, because the

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<sup>33</sup> Jedjud, 2007, p. 85.

<sup>34</sup> Jedjud, 2007, p. 85.

<sup>35</sup> Jedjud, 2007, p. 85.

<sup>36</sup> Jedjud, 2007, p. 85.

<sup>37</sup> Jedjud, 2007, p. 86.

<sup>38</sup> Glasser & Strauss, 2008, p. 31.

<sup>39</sup> Glasser & Strauss, 2008, p. 31.

<sup>40</sup> Glasser & Strauss, 2008, p. 36.

<sup>41</sup> Glasser & Strauss, 2008, p. 45.

<sup>42</sup> Glasser & Strauss, 2008, p. 75.

<sup>43</sup> Glasser & Strauss, 2008, p. 75.

<sup>44</sup> Glasser & Strauss, 2008, p. 76.

<sup>45</sup> Glasser & Strauss, 2008, p. 76.

researcher interviews many people at different positions and from different groups about the same topic.<sup>46</sup> This method demonstrates the linkage of my research with grounded theory, or in other words, how it was supported by the use of Grounded Theory. I remember sitting in the chair, closely listening to my respondents, people such as school principals, refugee camp directors, or asylum-seeking minors themselves. While listening to their responses I found that in some cases new questions popped up, or respondents answered questions I had been meaning to ask.

It is also important to understand the term “theoretical saturation,” which means that the researcher was able to develop properties of the category through theoretical sampling, but cannot find any additional data.<sup>47</sup> In other words, they keep seeing the same instances and, therefore, become confident that a category is saturated.<sup>48</sup> By saturating one category, the researcher moves to another group of data relevant to another category, thereby saturating it as well. This process is continued until they reach a conclusion that all the gaps in the theory have been filled by this process.<sup>49</sup>

Coding is an operation in which data is broken up, conceptualized, and reconnected in a different way, or, in other words, circle a chunk of text and label it with a category name that it fits in.<sup>50</sup> There are three stages of coding: open coding, axial coding and selective coding.

Open coding represents the stage of analyses, reading transcripts and determination of different categories that exist in data.<sup>51</sup> It is very important that the researcher keeps an open mind and pays attention to what the participants of the research are saying. Open coding is finished when no new categories emerge from the data.<sup>52</sup> Axial coding is the stage where a researcher uses codes and memos to show how categories relate to each other.<sup>53</sup> Axial coding forms the theory. Selective coding is the last stage where the researcher writes the story about how the theory explains the core process, i.e. provides an overall explanation of the theory.

Eventually, discriminant sampling is the stage when the researcher takes a whole new group of participants and asks the same questions in order to test or verify the emerged theory.<sup>54</sup> Constant comparative analysis indicates that the researcher is constantly comparing the data to the categories, which enables them to determine consistency in coding the data.

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<sup>46</sup> Glasser & Strauss, 2008, p. 76.

<sup>47</sup> Glasser & Strauss, 2008, p. 61.

<sup>48</sup> Glasser & Strauss, 2008, p. 61.

<sup>49</sup> Glasser & Strauss, 2008, p. 61.

<sup>50</sup> Jedjud, 2007, p.95.

Strauss & Corbin, 1990, p. 61.

ChrisFlipp on Grounded Theory, available at <https://www.youtube.com/watch?v=M2DyB-hGX-Q> (last consulted on 15.08.2019).

<sup>51</sup> ChrisFlipp on Grounded Theory, available at <https://www.youtube.com/watch?v=M2DyB-hGX-Q> (last consulted on 15.08.2019).

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

All academic research projects have the same objective: to add value to the larger body of knowledge, behind which stands clear evidence of scholarship, and to provide significant contribution to both the theory and improvement of practice.<sup>55</sup>

However, every academic research project is different in the way it is executed. This refers to the above-mentioned structure of the research that one develops. When debating whether or not a student should be told how to conduct academic research, I agree with Dr. Remenyi that finding out for oneself is the best way to learn (Remenyi, p. x), but necessary guidance still needs to be provided in order to avoid wrong turns that lead to excessive work that would not bear the fruits. In that respect, I feel very grateful that I have found a PhD mentor, Prof. Dr. Albert Scherr, who recognized my weaknesses, pointed me to the right literature and provided valuable comments and suggestions in such a timely manner.

Therefore, “Grounded Theory not only offers a method by which social science research may be rigorously conducted but it also provides a more general explanation and understanding of how qualitative research operates. The primary purpose of the original book written by Glaser and Strauss was not to provide a step-by-step guide to theory generation but rather to establish the principle that by using an appropriate method, researchers could make a valuable theoretical contribution to their field of study.”<sup>56</sup>

As previously mentioned, Grounded Theory enables the researcher to develop a theory, not to test the existing one.<sup>57</sup> In other words, before Grounded Theory, PhD candidates could only either approve or reject their hypothesis while testing established theory.<sup>58</sup>

Therefore, Glaser and Strauss demonstrated that if a rigorous method was carefully followed, novice researchers could make an important theoretical contribution to their field of study.<sup>59</sup> Furthermore, what is left to address is the research question, which is central in Grounded Theory and it is to be answered by proposing the theory or theoretical conjecture.<sup>60</sup>

Regarding the definition of the theory, Dr. Remenyi provides this: “A theory is systematically organized knowledge applicable in a relatively wide variety of circumstances, using a system of assumptions, accepted principles and rules of procedure devised to analyze, predict or otherwise explain the nature or behavior of a specified set of phenomena. But it is also often simply the best explanation which is available at that time.”<sup>61</sup>

Significance of Grounded Theory lies in the fact that it recognizes the scientific contribution that comes with the process of induction.<sup>62</sup> In particular, Glaser and Strauss (1967) provided this definition: “Grounded Theory is an inductive, theory discovery methodology that allows the

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<sup>55</sup> Remenyi, 2013-2014, p. xii.

<sup>56</sup> Remenyi, 2013-2014, p. 1.

<sup>57</sup> Remenyi, 2013-2014, p. 3.

<sup>58</sup> Remenyi, 2013-2014, p. 2.

<sup>59</sup> Remenyi, 2013-2014, p. 3.

<sup>60</sup> Remenyi, 2013-2014, p. 3.

<sup>61</sup> Remenyi, 2013-2014, p. 4.

<sup>62</sup> Remenyi, 2013-2014, p. 4.

researcher to develop a theoretical account of the general features of a topic while simultaneously grounding the account in empirical observations or data.”<sup>63</sup>

Induction can be described as an intellectual process or method of inference in which a researcher moves from data to theory. This is opposite from deduction, which is when a researcher moves from theory to data.<sup>64</sup> Even though there are many detractors who questioned the science based on induction, some of them David Hume, Karl Popper, and Einstein, it is still a particularly important inference method for scientists to use that provides many effective theories.<sup>65</sup> To word things differently, Dr. Remenyi notes that scientists generally do not mind living with the inherent uncertainty associated with any finding based on induction.<sup>66</sup> As a matter of fact, it is commonly applied. However, even though induction is an acceptable approach to academic research, the researcher needs to be constantly aware of the contingent nature of the knowledge it produces.<sup>67</sup>

The term “Dataism” is immensely important in Grounded Theory method, due to the process of theory development and it underlines the importance of data collection.<sup>68</sup> Therefore, the researcher is expected to collect a significant amount of data, which needs to be carefully focused on the research question. The suggestion is that unstructured interviews might lead to a potential wealth of resources.<sup>69</sup> Furthermore, all the data collected needs to be subjected to continuous comparison with other data collected, processed as soon as possible in order to use the acquired knowledge for the next round of data acquisition.<sup>70</sup>

Reflection is an important part of the research in order to make sense of the data. In other words, the researcher needs to decide how to group, sort and/or arrange the data in order to come to an understanding of and an answer to the research question.<sup>71</sup>

Bearing in mind afore-mentioned, my research project was conducted by using qualitative research, and the Grounded Theory method guided me through both the data collection and analysis processes. Fundamentally this paper takes a human rights-based approach (HRBA) to education and integration.

The heart of the human rights-based approach answers the following questions: the identification of the content within the right; identification of the right-holder and corresponding duty-bearer; if claim holders are able to claim their rights and fulfill them; and, if not, if one can help them do so.<sup>72</sup>

To put things differently, “HRBA is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to

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<sup>63</sup> Remenyi, 2013-2014, p. 4.

<sup>64</sup> Remenyi, 2013-2014, p. 5.

<sup>65</sup> Remenyi, 2013-2014, p. 5-6.

<sup>66</sup> Remenyi, 2013-2014, p. 6.

<sup>67</sup> Remenyi, 2013-2014, p. 7.

<sup>68</sup> Remenyi, 2013-2014, p. 10.

<sup>69</sup> Remenyi, 2013-2014, p. 10.

<sup>70</sup> Remenyi, 2013-2014, p. 10.

<sup>71</sup> Remenyi, 2013-2014, p. 17.

<sup>72</sup> Dr. Melchiorre, Power Point Presentation, 2016, slide 3.

promoting and protecting human rights.<sup>73</sup> This approach seeks to analyze inequalities and redress discriminatory practices and unjust distributions of power that impede development progress.”<sup>74</sup>

“Under a HRBA, the plans, policies and processes of development are anchored in a system of rights and corresponding obligations established by international law. This helps to promote the sustainability of development work, empowering people themselves, especially the most marginalized, to participate in policy formulation and hold accountable those who have a duty to act.”<sup>75</sup>

There is, however, no universal recipe for HRBA. Therefore, UN agencies have agreed on some essential attributes that help explain why I have adopted this approach in my research project. Basically, the main objective of HRBA and my research therefore is to find out how best to realize human rights that are enshrined to all peoples; it identifies a right-holder, their entitlement to those rights, and it identifies any corresponding duty-bearers and their obligations. Eventually it works towards strengthening the capacities of right-holders to make their claims and of duty-bearers to meet their obligations.<sup>76</sup>

Moreover, this PhD research project is a HRBA to education and integration, since it works with: a) a duty-bearer to ensure that the educational rights of ASMs are both legally enshrined and applied at national and local levels, and b) rights-holders, to inform them of their rights, how those rights are related to their right to education in Serbia, and how they could proceed claiming them.

Human rights analysis is crucial because it provides insight into distribution of power, sheds light on both groups lacking effective rights and on those depriving rights from vulnerable categories of people, and it highlights the root causes of poverty and vulnerability.<sup>77</sup> This approach is of utmost importance: it identifies interventions needed to build rights-holders’ capacities and improve duty-bearers’ performance.<sup>78</sup>

Therefore, HRBA may reveal capacity gaps in legislation, institutions, policies, and voices.<sup>79</sup> There might be a need to bring national laws into compliance with treaty obligations, institutional reforms might be needed in order to improve governance, strengthen capacities for budget analysis, and provide people with effective remedies when human rights are violated.<sup>80</sup> Furthermore, policy reforms may be needed in order to fight against discrimination and ensure consistency between macroeconomic and social policies, scaling up public expenditure towards the Millennium Goals.<sup>81</sup> In particular, Millennium Goal 2030 No. 4 on quality education stresses the importance of inclusive

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<sup>73</sup> HRBA Portal, available at [hrbportal.org](http://hrbportal.org) (last consulted on 02.03.2019).

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

education, reminding governments to ensure the access to education to all girls and boys and enable them to enjoy completely free, equitable and quality primary and secondary education.<sup>82</sup>

Finally, HRBA is a structure that supports the theory evolved through application of the Grounded Theory method. To put things differently, my human rights-related education helped me identify the research problem and pose the research question, that further on could be answered through data collection, analysis and evolvement of theory that lead to understanding of the research problem and again to improvement propositions.

### Research Questions

As previously mentioned, in order to conduct an academic research paper, one needs to pose research questions that can be answered through the application of an appropriate research method. Next, it should provide explanations to the answers through the development of theory. Therefore, I have formed my main research questions that led me through my research as follows:

How is the right to education guaranteed in a transit country? (Are adopted legal standards on the right to education applicable in practice?)

How do domestic social, economic and political conditions affect schooling of ASMs?

How do schools deal with the fast-changing situation?

I have strived to answer the above mentioned questions through the use of the Grounded Theory method. As the most accepted approach within qualitative research, it enables the researcher to develop theory that is grounded in data that is systematically gathered and analyzed.

My research is characterized by the interplay of methods applied, such as analysis of the international and domestic legal and EU policy framework addressing the educational rights of asylum-seeking children; observations in the fieldwork; interviews; as well as topical books and journals consultation.

### Field Trip

I have conducted a field trip to Serbia<sup>83</sup> in April 2017 and June 2018, where I had a number of meetings with respective stakeholders on issues of education of asylum-seeking minors in Serbia. In particular, I visited the Commissariat for Refugees and Migration (the Commissariat), a separate organization within the public system. Established by the 1992 Law on Refugees, the Commissariat is responsible for professional and other care-related tasks, return and integration of refugees under this law and the related administrative tasks.<sup>84</sup>

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<sup>82</sup> Millennium Goals, available at <https://www.un.org/sustainabledevelopment/education/> (last consulted on 15.08.2019).

<sup>83</sup> Case study data refers to Serbia without the data concerning the territory of Kosovo and Metohija.

<sup>84</sup> RS Official Gazette, No. 18/92, Official newspaper of the Federal Republic of Yugoslavia, No. 42/02 - SUS and "RS Official Gazette", No. 30 / 10

The Commissariat offered a very professional welcome, even providing me with statistics the Novi Sad city police had denied me earlier. However, one major set-back to my research was the denial of permission from the Commissariat to visit all of the refugee camps that I required. In particular, I was denied a visit to a refugee camp in Adaševci. A visit here would have been valuable because it is a refugee camp known as a previous transit point. Today though it has turned into a collective center that can accommodate between 800 to 1,300 people. It remains unknown why entry to this camp are so restricted. The small bit of information I did gain was through an informal interview with an UNHCR employee, who works there as a translator. According to them, when it comes to education, there are only non-formal educational workshops held by SOS Children and language lessons of German and Arabic language hosted by volunteers, two or three times for two hours per week. It can be gathered that no ASMs from this camp participate in any sort of formal education system, nor is there a willingness to include them in the same.

It has been rumored that Serbia started opening new refugee centers placed near the Romanian border, and transferring asylum seekers from the refugee camp in Adaševci to these newly opened ones, so that they would be further transferred to Romania.

On the other hand, I managed to get permission to visit a refugee camp in Krnjača. This appears to be the only refugee camp that participates in the state-run project of inclusion of ASMs into the formal education system.

A satisfying response was received by the Ministry of Education, Science and Technological Development of the Republic of Serbia in which they shared statistics and even the draft document providing the instructions on how to deal with the enrollment of asylum-seeking minors in the Serbian education system. This document was in the meantime signed and approved by the Minister of Education. However, there are still issues that need to be tackled properly, for no tangible solution to the issue of education ASMs has been introduced.

In addition to the statistics and instructions received, the Center for Education Policy provided permission to visit three schools that participated in the project of inclusive education. These were the primary school, “Branko Pešić” in Zemun, the primary school, “Jovan Ristić” in Borča, and the primary school, “Rade Drainac” in Borča. With this permission I was able to interview school principals, teachers and school psychologists as well as ASMs attending the lectures at that time. The devotion of each school’s staff is admirable and thankfulness of ASMs for participating in education was recognizable.

Finally, I was able to visit three primary schools, one high school and two schools that provided elementary education to adults. These schools all admit asylum-seeking minors, and they welcomed new students and parents with open-minds. All in all, as planned I managed to interview respective state officials related to education system, NGOs, school staff, refugee camp staff and last but not the least, asylum-seeking minors attending schools.



There were some disappointing attempts at data collection as well. UNICEF did not respond directly to my call requesting an interview, but rather believed I received all the sought-after information from the Ministry of Education and Center for Education Policy. The submission of my dissertation did not trigger any response from the UNHCR Serbia, nor from the Provincial Secretariat for education, legislation, administration and national minorities regarding my visit and interviews I intended to carry out.

Eventually, I have visited places such as Refugee Aid Miksalište, a space in Belgrade that gathers around itself organizations and individuals that provide assistance to refugees, such as NSHC, CARE, Terre des Hommes, Save the Children, Centar za integraciju mladih, Oxfam, UN Women, Medecins du Monde, Medecins sans Frontiers, Fondacija Ana i Vlade Divac, Mercy Corps, Centar za kriznu politiku i reagovanje, and a well-known place, the so-called “Barracks” near the Bus station in Belgrade, where asylum seekers are sleeping in rough conditions outside.

While visiting this wide variety of places, I tried to get a detailed picture of the position of asylum-seeking minors in Serbia. Was there anyone trying to locate ASMs in order to provide them with proper care and include them in Serbia’s education system as soon as possible? Who was responsible for ensuring these ASMs are safe from human traffickers and other dangers that they would be exposed to? I did not meet any of state officials focusing on these issues, but a high presence of non-governmental staff and volunteers, some of them even coming from Great Britain, Spain and France, was present and focusing on these very sensitive questions.

Due to the importance of empirical research, the following questions are those that I strived to get answers to during my field trip. They served as a sort of interview guide for me to help me collect background information for the grounded theory.

### **Field Trip: Interview Guide Questions**

1. How many children have expressed an intention to seek asylum (per gender)?
2. How many required an asylum?
3. How many have gotten:
  - the status of refugee?
  - subsidiary protection?
  - temporary protection?
4. How many minors are estimated to be transiting through the country on a daily basis?
5. How are the child victims of human trafficking recognized in the field?

### **On Education:**

6. How many asylum-seeking minors (ASMs) are enrolled in school? How many are in pre-school education?
7. What is the quality of the education?

8. How are the lectures organized?
9. Is the lack of school diplomas or personal documents a barrier to inclusion?
10. How does admission to schools look?
11. Are ASMs given any document that certifies their participation in Serbia's education system? And if returned from Germany based on re-admission agreement do they possess any document on their school participation in Germany?
12. How are ASMs placed in schools and classes, i.e. age determination or level of education?
13. Are ASMs separated in lectures from the rest of the children?
14. Should ASMs be included in the education system immediately, or should it be conditionally granted upon possession of the residence permit?
15. How long do ASMs stay in the Serbian education system?
16. Are there any challenges and/or barriers to inclusive education?
17. Are there any relevant projects and/or programmes that enhance access to education for ASMs?
18. Which state institutions participate in such programmes? Which NGOs?

### **Other Questions:**

19. Are ASMs placed in accommodation together with adults or are they kept separate?
20. Are unaccompanied ASMs immediately appointed a legal guardian?
21. Are there scholarships granted to ASMs?
22. Are there returnees from Germany among ASMs?
23. Have ASMs reported forced push-ups or push-backs?
24. Have they named the reasons to continue their migration to Germany?
25. Can ASMs participate in tailoring the school curriculum?
26. Is education free for ASMs?

### **Encountered challenges**

The difficulties in obtaining information from police administration, denial of visits to particular refugee camps, or unanswered E-mails from respective international and domestic organizations, were not the only challenges I faced in gathering data.

Importantly, this research lasted from October 2015 to August 2019. Hence, during the period of four years much has changed regarding both the numbers/statistics and international and domestic legislation. Similarly, some online resources that existed during the time became unavailable. Since this is an ever changing, dynamic topic, this dissertation has been built through the submission of Chapters on a regular basis and the final result shows the evolution of this topic. Throughout the dissertation, an attempt was made to keep the chapters more or less as they were initially formed, only updating crucially relevant parts.

Due to the change in the existence of online resources, the date of when the webpage was consulted is always indicated. These entrances should also serve as a reminder of the dynamic nature of the research.

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Collected data was used in an organized and well-controlled way. Not only does this ease the process of researching and writing, but it also provides a way to contact the competent authorities to achieve change. Well-organized data can inform authorities about specific propositions that must be supported in order to design an appropriate strategy, adopt suitable policies and implement the necessary innovations in the area of intercultural education. Eventually, this research project could lead to enhanced cooperation of the countries along the migration route and the states of the European Union, and, in Serbia's case, the data could identify the need for alignment with EU legislation.

## State of Research

In this part of the dissertation, I provide literature related to the theoretical framework on human rights and education, in particular on justification of the right to education, and on the nature and aim of the right to education. It is followed by literature which creates a linkage between basic human right - the right to education and asylum-seeking minors. Afterwards, I move on to literature about the state as a duty-bearer, which is corroborated with judicature. It eventually proceeds to a section that provides a short overview of the right to education of ASMs in some European countries. The purpose is to provide a greater picture about the chosen topic of my dissertation, and to offer a better understanding of the same. Having said so, it is important to acknowledge that each of these sections represent topics that could be covered in depth by other PhD dissertations, e.g. the below addressed concept of human rights is narrowed down in order to meet the requirement of my topic. Therefore, in order to avoid criticism of being superficial, it is important to note that human rights in general fall out of the scope of this dissertation.

European countries began to lay down the provisions of compulsory primary education within domestic laws in the nineteenth century.<sup>85</sup> However, before analyzing the situation within education, the concept of human rights needs to be addressed. The concept of human rights arose in the eighteenth century as a reaction to feudal/absolutist states who were meant to protect individuals from the state, since the state was generally viewed as the enemy.

The international protection of human rights cannot be disassociated from national protection of the same. However, these guarantees were initially meant to countervail forces against state power, and only later was it clear that there was a need to establish a mechanism at the international level. This was necessary in order to accommodate instances in which national systems turned into dictatorships or struggled with irrational forces of anarchy.<sup>86</sup> The first precondition for this was the acceptance and incorporation of human rights as an indispensable element of constitutional order at national level, which even in the 19<sup>th</sup> century was not the case in either the German empire under the 1871 Constitution, or in France's Third Republic of 1871.<sup>87</sup> It is important to note that the 19<sup>th</sup> century was marked with the abolition of the slave trade and the development of humanitarian law, both profoundly important for the protection of the concept of human dignity and paving the way for the principles of equality and prohibition of discrimination on racial grounds. Only after the World War I ended in 1918 was the general need for a more specifically defined role for the government in meeting its obligations to respect and protect basic human rights identified.<sup>88</sup>

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<sup>85</sup> Coomans, 2009, p.427.

Delbrück, 1992, p. 95.

<sup>86</sup> Tomuschat, 2008, p. 9.

<sup>87</sup> Tomuschat, 2008, p. 10.

<sup>88</sup> Tomuschat, 2008, p. 10.

In between the two World Wars, the first steps in the field of the protection of human rights were cautious and timid, which was also reflected in the mild role of the League of Nations in this field. Furthermore, the disintegration of the Austro-Hungarian Empire and the extensive cession of territory to which Germany had to consent according to the Versailles Peace Treaty, meant the rise of many ethnically heterogeneous states. This further implied the need for the protection of minorities.<sup>89</sup> Due to the fear that these newly emerged states would consider themselves as nation states and would try to impose their own specific and dominant identity to the minorities, the demand that the status of these minorities be regulated with the treaty was placed.<sup>90</sup> Consequently, Yugoslavia, Greece, Czechoslovakia, Poland and Romania concluded specific agreements with the Principal Allied Powers and in accordance with the Peace Treaties, whereas the relevant provisions of the Peace Treaty regulated the status of minorities in a number of other states such as Austria, Bulgaria, Turkey and Hungary.<sup>91</sup> These international documents were supposed to provide special benefits for concerned minorities.

With regard to the mild system of protection under the wing of the League of Nations, there were two weaknesses identified. First of all, when it comes to international treaties, their implementation was subject to the discretion of the concerned state party. Secondly, the minority treaties that were placed under the guarantee of the League of Nations resulted in the fact that the system did not have “teeth,” meaning the abuses could not be prevented and, most importantly, no Western state had submitted to the obligation.<sup>92</sup> Hence, the system was perceived as discriminatory.

On the other hand, another important international organization was established in 1919, the International Labour Organization (ILO). As part of the peace settlement, the ILO strived for the betterment of living conditions for human beings who remain essentially subjected to the sovereign powers of the nation state.<sup>93</sup> Therefore, the period between the two World Wars was still marked with traditional thinking, and the thought that the international community could have a legitimate general mandate that protected civilized standards of conduct in a relationship between the governments and the citizens was absent.<sup>94</sup>

Then came World War II, during which it became clear that human rights needed to be considered on an international level in order to prevent repetition of the horrors that humanity experienced. In particular, it became clear that never again could it be maintained that human beings are placed by law under a sole jurisdiction of their home state.<sup>95</sup> The first international document, the Universal

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<sup>89</sup> Tomuschat, 2008, p. 18.

<sup>90</sup> Tomuschat, 2008, p. 18.

<sup>91</sup> Tomuschat, 2008, p. 18.

<sup>92</sup> Tomuschat, 2008, p. 20.

<sup>93</sup> Tomuschat, 2008, p. 21.

<sup>94</sup> Tomuschat, 2008, p. 21.

<sup>95</sup> Woods, 2014, p. 182.

Declaration of Human Rights (UDHR) defining the rights of every human being, independently of his race, color, sex, language or other any other feature, was adopted at the United Nation's General Assembly in 1948.<sup>96</sup> At that time, Yugoslavia abstained from voting. It was then that the right to education made its way into core international human rights instruments, such as the Universal Declaration of Human Rights, the First Optional Protocol to the European Convention on Human Rights and Fundamental Freedoms (ECHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), etc., and it was at the same time that countries started to incorporate the right to education into their constitutions.<sup>97</sup>

Despite their description as “universal,” the existence, validity and content of human rights is still the subject of debate especially in philosophy, legal and political sciences. Therefore, “the philosophy of human rights shows that there is currently no common ground with regard to the moral and legal justification or the ontological and epistemological status of human rights.”<sup>98</sup> For author Jost Delbrück, the classical notion of human rights is associated with the idea of individual freedom; that is, freedom from interference with or violation of basic rights of citizens at the hands of governments, legislatures, or even judiciaries neglecting the constitutional or other wholesome restraints of the law.<sup>99</sup>

Nevertheless, human rights were initially perceived as a concept based on the idea that human beings each have universal natural rights. Over time though, human rights have been and are interpreted as the general principle in which political systems are built, or on a basis of global civilization values, the beginning of a new universal political culture, and they mark the presumption of mutual respect for different political systems and coexistence of different religions and nations.

In other words, during the course in history, human rights have evolved from divine rights into natural rights, and from natural rights into fundamental rights.<sup>100</sup> Basically, human rights are not rooted in a metaphysical, natural law order that exists above time and space, but rather as the struggle for humane constitution of the state, which incorporates human rights as politico-historical rights.<sup>101</sup> They are at the same time fundamentally moral rights in the sense that they do not depend on positive recognition in law for their validity, and norms such as the right to life, the right to be free from torture and other inhumane or degrading treatment or punishment, the right to be free from slavery or servitude, represent *jus cogens* (compelling law), meaning that no derogation is permitted.<sup>102</sup>

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<sup>96</sup> Tomuschat, 2008, p. 24.

<sup>97</sup> Coomans, 2009, p.427.

<sup>98</sup> Gordon, 2005, p.757.

<sup>99</sup> Delbrück, 1992, p. 92.

<sup>100</sup> Van Der Ven, 2010, p. 223.

<sup>101</sup> Van Der Ven, 2010, p. 223.

<sup>102</sup> Woods, 2014, p. 20.

## **Origins of human rights thinking**

Human rights thinking was present even in ancient times, even though that might not be easily recognizable, but various standards of thought did originate in the philosophical and dramatic writings produced at the time.<sup>103</sup> For instance, the playwright **Sophocles** (495-406 BC) defended the individual's right to resist state repression; **Plato** (427-348 BC) developed an early version of universalism demanding the fair treatment of all persons, regardless being a citizen or not; **Aristotle** (384-322 BC) preoccupied himself with thought on the relationship between virtue, justice, and rights in accordance with the political community; whereas the Greek stoics and Romans such as **Cicero** and **Seneca** were keen to discuss the concept of the citizen of the world.<sup>104</sup> Cicero (106-43 BC) is believed to have laid down the philosophical foundations for the later theories of natural law, by advocating a general set of universal principles that would transcend local civil laws.<sup>105</sup>

Roots of early human rights thinking can be found in religious texts, as well. For instance, Universalists such as Aquinas or Augustine, who discuss the equality of people before God. **Thomas Aquinas** (1225-1274) believed that human dignity and value are innate properties, which is validated according to natural law. The basis of his thinking was rooted in his understanding of the Christian faith.<sup>106</sup>

Regarding natural law and the *state of nature*, medieval and early modern Western philosophy lent itself to much political discussion, which was focused on the divine right of kings.<sup>107</sup> According to this stance, only monarchs held their place in society by nature and the will of God, leaving all others subject to the will of the monarch.<sup>108</sup> However, these ideas were challenged by the so-called pre-social human nature analysis, especially by **Thomas Hobbes** (1588-1679) in his famous masterpiece *Leviathan*.<sup>109</sup> Namely, he claimed that all humans are violent and greedy animals and that their natural state is anarchy.<sup>110</sup> It is only due to their strong desire for self-preservation that they come together to establish a set of rules, hence the king (or modern state) is the manifestation of these rules.<sup>111</sup> In other words, individuals surrender their personal freedoms to the state in return for the security that it provides. Therefore, the state is given the right to rule, whereas the

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<sup>103</sup> O'Byrne, 2003, p. 28.

<sup>104</sup> O'Byrne, 2003, p. 28.

<sup>105</sup> O'Byrne, 2003, p. 28.

<sup>106</sup> O'Byrne, 2003, p. 29.

<sup>107</sup> O'Byrne, 2003, p. 29.

<sup>108</sup> O'Byrne, 2003, p. 29.

<sup>109</sup> O'Byrne, 2003, p. 29.

<sup>110</sup> O'Byrne, 2003, p. 29.

<sup>111</sup> O'Byrne, 2003, p. 29.

individuals have the duty to obey.<sup>112</sup> This became known as the basis of the so-called *social contract*.

The power of the monarch became under attack with the development of thought from parliamentarians who were dedicated establishing a system of government guided by the people.<sup>113</sup> Remarkably, jurist **Hugo Grotius** (1583-1645) argued for the establishment of international law which would protect the rights of all citizens of the world. That is, the laws of nation states should be measured against the standards of international law, which should be primarily applied to prevent unjust wars between states.<sup>114</sup> On the other hand, **John Locke** (1632-1704), who was still working with the contractarian tradition, was the first to suggest that there are natural rights, i.e. rights which are granted to us by sole virtue of the fact that we are humans.<sup>115</sup> In particular, these rights are shared by all people, and they are inalienable and cannot be removed by any political authority.<sup>116</sup> Contrary to Hobbes, Locke did not rely on the image of pre-social warlike, greedy and violent humans beings who are in need of a strong state to ensure security, but rather on humans who are naturally peaceful, free and mercantile.<sup>117</sup> According to him, the state emerges only due to the occasional need for an independent arbitration in any disputes that could arise over trade or property.<sup>118</sup> Consequently, Locke used the idea of rights to attack the idea of a strong state, and, due to his school of natural rights mirrored in *life, liberty and property*, he is considered the founder of modern liberalism.<sup>119</sup>

In the era of the so-called French enlightenment, **Jean-Jacques Rousseau** (1712-1778) extended the idea of the social contract beyond the simplistic individualism of Hobbes and Locke. Rousseau incorporated the role of the community in his famous masterpiece *The Social Contract*, in which he argued that the community must represent the general will of the people.<sup>120</sup>

Contribution of **Charles-Louise de Montesquieu** (1684-1755) to the philosophy of human rights needs to be mentioned, as well. He is credited with the development of the theory of separation of power. Particularly the executive, the judicial, and the legislative branches, which need to be independent from one another in order to secure a just and fair state.<sup>121</sup> He was also known for his opposition to all forms of despotism, slavery and intolerance.<sup>122</sup>

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<sup>112</sup> O'Byrne, 2003, p. 29.

<sup>113</sup> O'Byrne, 2003, p. 29.

<sup>114</sup> O'Byrne, 2003, p. 30.

<sup>115</sup> O'Byrne, 2003, p. 30.

<sup>116</sup> O'Byrne, 2003, p. 30.

<sup>117</sup> O'Byrne, 2003, p. 30.

<sup>118</sup> O'Byrne, 2003, p. 30.

<sup>119</sup> O'Byrne, 2003, p. 30.

<sup>120</sup> O'Byrne, 2003, p. 31.

<sup>121</sup> O'Byrne, 2003, p. 31.

<sup>122</sup> O'Byrne, 2003, p. 31.



Furthermore, if the French Enlightenment thinkers were known for laying down the foundation of political rights, it is the German philosopher **Immanuel Kant** (1724-1804) who is often credited for laying down the foundation for the modern understanding of human rights as an ethical practice.<sup>123</sup> He developed the term, categorical imperative, which is a principle that concerns moral action. To be moral, an action had to satisfy three formulae. The first is *the formula of universality*. This formula states that morality must be impartial and non-arbitrary and thus affirms equality.<sup>124</sup> Within it, humans are expected to behave towards others in the same way they expect and desire others to behave towards them; moral responsibility means that all people act like this as if this was a general universal law.<sup>125</sup> The next formula is *the end in itself*. It demands respect for all persons and affirms that morality must involve justice.<sup>126</sup> The third and final formula is *the formula of the kingdom of ends*, which is the principle of autonomy that demand the individual to recognize their responsibilities and empowerment, implying that morality must involve freedom.<sup>127</sup>

Furthermore, Kant proposed a triangular structure of rights with the aim to distinguish human rights from civil rights that were granted to the individual by the nation state.<sup>128</sup> The triangle structure was set up as such: in the civil rights granted to citizens of a state by the government, the international rights of states governing the dealings with other states, and third, the cosmopolitan rights of individuals and states as existing independently in a universal state of humankind.<sup>129</sup> Simply put, people have rights just because they share the Earth's surface and essential oneness of the human race.<sup>130</sup>

The further evolvement of human rights thinking, linking Locke's philosophy of natural rights and political constitution of states, came with the publication of the *Rights of Man* (1791-2) by **Thomas Paine** (1737-1809). Paine himself was a supporter of the revolutions in America and France. He was a radical and democratic republican who believed in sovereignty of the individual person.<sup>131</sup> He argued that the formal implementation of rights within the political sphere was crucial for the establishment of social justice. He was known for advocating for minimal state intervention, and he supported the free market economy idea. Paine was also considered to be an early advocate of the right of people to education and social welfare.<sup>132</sup>

Unlike Paine, Italian philosopher **Giuseppe Mazzini** (1805-1872) examined the other side of the coin, just focusing on the duties. He examined the role of the individual within both a nation state

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<sup>123</sup> O'Byrne, 2003, p. 31.

<sup>124</sup> O'Byrne, 2003, p. 32.

<sup>125</sup> O'Byrne, 2003, p. 32.

<sup>126</sup> O'Byrne, 2003, p. 32.

<sup>127</sup> O'Byrne, 2003, p. 32.

<sup>128</sup> O'Byrne, 2003, p. 32.

<sup>129</sup> O'Byrne, 2003, p. 32.

<sup>130</sup> O'Byrne, 2003, p. 32.

<sup>131</sup> O'Byrne, 2003, p. 32.

<sup>132</sup> O'Byrne, 2003, p. 32.

and the wider community of humankind.<sup>133</sup> According to him, the role of the nation state was to unite diverse individuals so that they could more effectively realize their ultimate duties towards the community of all people.<sup>134</sup>

Locke's reliance upon natural law and Pain's glorification of the Rights of Man did not go without serious criticism and challenge by some of their contemporaries, such as the utilitarian critique of rights made by Jeremy Bentham, and the radical critique of bourgeois individualism made by Karl Marx.<sup>135</sup>

**Jeremy Bentham** (1748-1832) criticized the idea of natural law and rights in general, because they are neither observable nor enforceable.<sup>136</sup> In general, according to utilitarians as opposed to Kantians, qualities such as goodness or truth can only be measured in the context, and not against some abstract universal principle.<sup>137</sup> In other words, utilitarians adopt a rational choice model, where the concept of rights can only be defended if they are to be seen as emerging from deliberative assessment of the relative benefits and disadvantages of a given course of action.<sup>138</sup> This stance means that human rights are not an abstract, pre-social phenomena rooted in natural law, but the products of human decision making.<sup>139</sup>

For instance, Bentham, the pragmatist that he was, based his arguments on observations geared with scientific measurement and explanation rather than abstract conditions. He pointed out aspects of human development, parental or community bonds, and even inequalities in skills and knowledge in order to criticize Rousseau's argument that all people are born free and equal in rights.<sup>140</sup>

An equally critical stance on human rights was adopted by **Karl Marx** (1818-1883). He wondered how useful the Declaration of the Rights of Man and of the Citizen in France would be to Jews in their plight.<sup>141</sup> He interpreted the language of the Declaration and concluded that humans are nothing but bourgeois individuals separated from one another and from their communities.<sup>142</sup> According to him, there are no pre-social rights, because we become people only in a society.<sup>143</sup> Therefore, rights can only be political and social and are achieved through historical development and struggle.<sup>144</sup>

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<sup>133</sup> O'Byrne, 2003, p.33.

<sup>134</sup> O'Byrne, 2003, p.33.

<sup>135</sup> O'Byrne, 2003, p.33.

<sup>136</sup> O'Byrne, 2003, p.34.

<sup>137</sup> O'Byrne, 2003, p.34.

<sup>138</sup> O'Byrne, 2003, p.34.

<sup>139</sup> O'Byrne, 2003, p.34.

<sup>140</sup> O'Byrne, 2003, p.34.

<sup>141</sup> O'Byrne, 2003, p.34.

<sup>142</sup> O'Byrne, 2003, p.34.

<sup>143</sup> O'Byrne, 2003, p.34.

<sup>144</sup> O'Byrne, 2003, p.34.

Bearing in mind the afore-mentioned definitions, human rights as we understand them today are steeped in the language of Locke, Kant, Paine and others. However, interpretations of the concept are still varying and criticism remains.<sup>145</sup> For instance, the challenge of universality, the issue of natural law, the issue of cultural difference, the issue of value dimensions, the issue of hierarchy of rights, the issue of duties, the issue of individuality, etc. all suggest that our thinking and interpretation of human rights is an evolving process.

### Criticism

International protection of human rights means international observation and monitoring rather than direct control.<sup>146</sup> Similarly, established mechanism of protection at both the international and regional levels do not guarantee to the full extent the protection of human rights for every person.

Furthermore, states disagree when it comes to ratification of core international human rights standards. For instance, the West is always in favor of civil and political rights and thus more prone to ratify instruments tackling those rights. Eastern countries, on the other hand, are more willing to ratify international legal standards on social, economic and cultural rights. Moreover, there is no consensus on issues such as the death penalty, abortion, euthanasia, or “targeted killings” that are connected to terrorist attacks.

Criticism of human rights is very often directed at the actions of the so-called world policeman, the United States of America. While the U.S. is usually the country considered to be the main protector of human rights, it, at the same time, is the country that frequently abstains from ratifying international human rights treaties. It has also been known to commit human rights violations such as those concerning the treatment of detainees inside the walls of Guantanamo Bay, or the pre-trial execution of Osama bin Laden. Bin Laden was the leader of the Islamist group Al-Qaeda, believed to have orchestrated the terrorist attacks on 11 September 2001. He was killed in Pakistan in 2011 in a CIA-led operation, without being given the opportunity to undergo a proper trial. It is not uncommon that in Western states, acts like these go unpunished, governments are not held accountable, and their acts are simply justified through a security discourse that projects the West as defending "civilization" and liberal values.<sup>147</sup>

Ultimately, criticism of human rights is largely centered around the idea that human rights represent European intellectual and spiritual heritage or that human rights do not embody values which enjoy worldwide acceptance. Very often the concept of *Western civilization* emerges, without clear

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<sup>145</sup> O'Byrne, 2003, p.36.

<sup>146</sup> Tomuschat, 2003, p. 13.

<sup>147</sup> Singh and Mayer, 2014, p. 382.

explanation on the meaning of the same. Normally, the linkage with the heritage of Christianity or Judaism is made as well as to the thought of ancient Greeks and Romans.<sup>148</sup>

Nevertheless, due to varying approaches towards highly debated policies regarding the death penalty, abortion, or euthanasia, even Western civilizations' policies are not unanimous. However, it is argued that the West has invented legal techniques that are today commonly considered to characterize human rights.<sup>149</sup> At the same time, it would be wrong to claim that human rights are part of only Western heritage and that they cannot be traced back to other cultures, since there is the minimal universal moral code prohibiting murder, servitude or genocide common to all societies.<sup>150</sup>

### Post-colonialism

The term post-colonialism is marked with multiple meanings and political associations that are tied to theories of imperialism, modernity, racism, ethnicity, cultural geography and postmodernism.<sup>151</sup> Post-colonialism critique demonstrates (1) how international law has been complicit within the processes of Empire and colonial rule, and (2) how international law, including human rights, can sometimes be far from promoting freedom thanks to a dark side that is revealed through encounters with difference.<sup>152</sup> For instance, during the colonialism period, European states denied sovereignty to non-European states through a *civilizational* discourse, denying "the other" sovereign status or the example of education, which meant to "civilize" Native Americans in North America.<sup>153</sup>

The term "postcolonialism" demarcates the transition from colonialism to self-determination among formerly colonized nations.<sup>154</sup> The following definitions sum up postcolonialism and its relation to human rights: "Some scholars view postcolonialism as symbolic of a liberating emancipation for new nations, despite these new states' participation in the trappings of western modernity by institutionalizing such things as citizenship, nationalism, legal codes and cooperation in international bodies such as the United Nations. But for many subaltern and neo-Marxist scholars, postcolonial rhetoric has become emblematic of continuing, and often veiled, oppression by the West over the rest of the world."<sup>155</sup> "Thus while postcolonialism can be considered a critique of modern forms of domination, its insight lies in understanding how the past informs the present."<sup>156</sup>

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<sup>148</sup> Tomuschat, 2008, p. 82.

<sup>149</sup> Tomuschat, 2008, p. 85.

<sup>150</sup> Tomuschat, 2008, p. 85.

<sup>151</sup> Darian-Smith, 1996, p. 291.

<sup>152</sup> Singh and Mayer, 2014, p. 381.

<sup>153</sup> Singh and Mayer, 2014, p. 382.

<sup>154</sup> Darian-Smith, 1996, p. 292.

<sup>155</sup> Darian-Smith, 1996, p. 292.

<sup>156</sup> Darian-Smith, 1996, p. 292.

Human rights are often faced with *post-colonial* criticism, or, in other words, the issue of how human rights respond to the effect of colonialism. In particular, regarding cultural effects such as politicization of identity, race, tribe, Christianity and Islam conversion; economic effects, such as dependency, integration, adjustment; and political effects such as state formation, regime change, political parties; education (or at least the western style of education), and/or destruction of indigenous knowledge to name a few.

Bearing in mind the previously mentioned and paradox of the fact that we live in the *Age of Rights*, i.e. in time that includes the existence of international organizations such the United Nations, and respective international human rights standards, decolonialization, and a rise of governmental and non-governmental organizations; yet weaknesses such as the Cold War, fragile states emergence faced with dictatorships, genocide in Rwanda and Ex-Yugoslavia, poverty, climate change, etc. are still taking place. These realities are enough reason for one to question the meaningfulness and very effectiveness of the human rights concept.

Finally, this leads us back to the question of universality of human rights, as the American political scientist and social philosopher **Michael Walzer** has noted, the “minimal and universal moral code” exists worldwide and comprises of prohibition of murder, slavery, torture or genocide.<sup>157</sup> In addition, since human rights are derived from the nature of human beings, any possible societal divergences appear to be secondary and insignificant.<sup>158</sup>

To summarize, human rights are concepts that, for a period of time, might not be applicable or be openly breached, but in the long run all of the above confirms the strong need for human rights ideological surrounding that would make the states identify with it.<sup>159</sup>

### Word of Science

Human rights were an initially marginalized subject within the world of social science. So far, in social science the study of human rights has been dominated by lawyers. However the increasing importance in national and international politics has stimulated the interest of social scientists.<sup>160</sup> The main focus in social science is placed on gross violations of human rights. These are violations such as genocide, social conflict, rebellion, repression, state behavior, and ethnic diversity.<sup>161</sup> On the other hand, political science interests itself about variations in the degree to which governments respect citizen's rights, whereas the subject of study for sociologists and anthropologists that has

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<sup>157</sup> Tomuschat, 2008, p. 95.

<sup>158</sup> Tomuschat, 2008, p. 95.

<sup>159</sup> Tomuschat, 2003, p. 127.

<sup>160</sup> Freeman, 2011, p. 7.

<sup>161</sup> Freeman, 2011, p. 7.

recently occupied their attention is the impact of the global economy on the protection of human rights.<sup>162</sup>

The political character of human rights has philosophical implications, since the lawyers who dominate human rights studies rely at large on the philosophy of *legal positivism*. Simply put, legal positivism states that human rights are what human rights law says they are.<sup>163</sup> “Human rights are, however, made and interpreted by a political process.”<sup>164</sup>

The crucial drawback of a legal-positivist approach is the position that rights only exist when they are enforceable.<sup>165</sup> Even though it would be desirable for all human rights to be legally enforceable, in reality it is not necessary that they all be legally enforceable. If they were, they would be referred to as *legal rights*.<sup>166</sup> Put differently, one appeals to human rights exactly when legal institutions fail to recognize and enforce them.<sup>167</sup>

Importantly, the principal philosophical problem of human rights is to show that they can be justified only if not being derived from law or superstitious beliefs.<sup>168</sup> In other words, the *source* of human rights must be identified. As previously mentioned, the first systematic human rights theory, which was presented by John Locke, assumed that God was the source.<sup>169</sup> Similarly, the United Nations Universal Declaration on Human Rights, claimed that these rights are universal, since it needed the justified basis of human rights to be abstract from particular religious or ideological beliefs, but the character of that abstraction remained unclear.<sup>170</sup>

Eventually, in order to comprehend the whole idea of human rights, the interdisciplinary approach is necessary. With it, all the gaps that would emerge could be overcome and filled by the contribution of political, social, cultural, economic and legal studies. It is therefore common to say that human rights represent *minimum standards* of good governance and present building blocks of ethical, human and just societies.<sup>171</sup>

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<sup>162</sup> Freeman, 2011, p. 9.

<sup>163</sup> Freeman, 2011, p. 11.

<sup>164</sup> Freeman, 2011, p. 11.

<sup>165</sup> Freeman, 2011, p. 11.

<sup>166</sup> Freeman, 2011, p. 11.

<sup>167</sup> Freeman, 2011, p. 11.

<sup>168</sup> Freeman, 2011, p. 11.

<sup>169</sup> Freeman, 2011, p. 11.

Woodiwiss, 2005, p. XII.

<sup>170</sup> Freeman, 2011, p. 12.

<sup>171</sup> Freeman, 2011, p. 13.

Mutua, 2002, p. 157.

## The Right to Education

With this understanding of human rights, let us now focus on the right to education. According to **Delbrück**, human personality inherent in human dignity forms the basis of all aspects and implications of the right to education. As such, human personality must be taken into account when determining the meaning and scope of the right, especially with regard to the role of the State in the process of implementing the right to education.<sup>172</sup> In particular, while the classical human rights aim was to keep state authority out of the individual's life, contemporary human rights aim to get the state or government involved, placing an obligation on the state to act and implement each right, in this case the right to education.<sup>173</sup>

Commonly referred to as the second generation of human rights, social, cultural and economic rights take center stage. It is often criticized as *socialist* and incompatible with the concept of a free, market-oriented social order.<sup>174</sup> But the most serious allegation against the second generation of human rights is that strong state involvement might threaten individual freedom and might undermine the very foundations of a free society.<sup>175</sup>

So how can one justify the right to education? The question could be approached from various angles. For instance, the right to education could be justified via the relationship between duties and rights.<sup>176</sup> In other words, if citizens have duties in society, they must have certain rights to enable them to fulfill these duties.<sup>177</sup> Eventually, these obligations are both legal and moral.<sup>178</sup> In practice, that means that if individuals should maximize their potential in the work force and achieve certain goals, it is difficult to conceive of an individual carrying out these duties without first being educated.<sup>179</sup> The reciprocal nature of the rights-bearers (individuals) and the duty-bearers (state) is one that requires constant consideration when developing policy and best practices.

**John Stuart Mill** noted “educability meant that men, women and children are susceptible to influences which assist their growth towards goals which are deemed worthwhile, whether happiness, freedom, or any others; that they can be initiated into existing values and thus contribute to society's permanence and cohesion; and that they can be raised to higher levels of experience, to an improved quality of life, thus contributing to social progress and human betterment. From it there follows inevitably a commitment to education as a prime instrument in the creation and

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<sup>172</sup> Delbrück, 1992, p. 99.

<sup>173</sup> Delbrück, 1992, p.92.

<sup>174</sup> Delbrück, 1992, p.92.

<sup>175</sup> Delbrück, 1992, p.93.

<sup>176</sup> MacKay, 1997, p. 76.

<sup>177</sup> MacKay, 1997, p. 76.

<sup>178</sup> Mac Kay, 1997, p. 76.

<sup>179</sup> MacKay, 1997, p.76.

development of a democratic society-education not as the privilege of a few, but as the right and the obligation of all”.<sup>180</sup>

Furthermore, the right to education could be justified through requirements that promote human happiness, such as *rationality*, *dignity* and *freedom*.<sup>181</sup> **Epictetus** described the last requirement, freedom, well by saying that „Only educated man is free.“ The second requirement of dignity means that education actually promotes dignity through the increase of self-esteem and self-reliance; and eventually the requirement of rationality, or the goal of education, is to produce rational individuals.<sup>182</sup> With this in mind, a society welcomes rational individuals that fit in and contribute to common progress, and on the other hand every society finds a way to deal with perpetrators of an adopted social system of values.

From the legal point of view, in order to be justified, the right has to be translated into legal terms. This means it must be cast in a form that can generate both effective executive action and a basis for legal argument in case of its violation.<sup>183</sup>

One could also justify the right to education by referring to societal conventions.<sup>184</sup> “If one looks at the history of education, it is evident that the government has usurped what was once the domain of parents and private institutions. Following the industrial revolution, the state realized the importance of an educated populace, and parents acknowledged the limits on their ability adequately to educate their children. The education system developed into a state-financed and controlled institution. The end result is that the government has acquired a virtual monopoly on the dissemination of information to children of compulsory schooling age.”<sup>185</sup>

When this shift of power moved from the hands of parents into the hands of a state, coupled with an increase of the importance of education to both students and the state, the process became irreversible and it was clear that education is one societal convention that should be considered a right.<sup>186</sup>

Regarding the definition of education and the question of why it represents basic human rights, it can be defined in the broad sense as all activities by which a human group transmits to its descendants a body of knowledge and skills and a moral code which enables that group to subsist.<sup>187</sup> An example of this occurred in 1954 when the United States Supreme Court stressed the

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<sup>180</sup> MacKay, 1997, p. 76.

<sup>181</sup> MacKay, 1997, p. 76.

<sup>182</sup> MacKay, 1997, p. 76.

<sup>183</sup> MacKay, 1997, p. 77.

<sup>184</sup> MacKay, 1997, p. 75.

<sup>185</sup> MacKay, 1997, p. 75.

<sup>186</sup> MacKay, 1997, p. 75.

<sup>187</sup> Hodgson, 1996, p. 237.



fundamental importance of education for all in the famous case of **Brown v. Board of Education**. In it, the Court concluded that “in these days, it was doubtful that any child may reasonably be expected to succeed in life if he or she is denied the opportunity of an education.”<sup>188</sup>

The **United Nations Educational, Scientific and Cultural Organization (UNESCO)** has defined the right to education as “the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge.”<sup>189</sup> It is important to stress that education is a life-long and continuous process, which is not age restricted, meaning it belongs to everybody.<sup>190</sup>

Furthermore, the **United Nations Committee on Economic, Social and Cultural Rights (CESCR)**, in its General Comment No. 13 on the right to education paragraph 1, says the right to education is an empowerment right. As such, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Importance of education lies in several vital roles including empowering women, safeguarding children from exploitative and hazardous labor and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth.<sup>191</sup>

Similarly, according to author **Mona Montakef**, the human right to education should be seen as an empowerment right, i.e. it is not only a particular human right but also a fundamental instrument for the furtherance of other human rights.<sup>192</sup>

Author **Albert Grande** speaks of education as of absolute, natural right that rescues individuals from ignorance, poverty, and vice, and, consequently, interprets the right to education as a natural right, the right that does not need to be codified explicitly, but is rather applicable directly to all.<sup>193</sup>

Moreover, an American educational reformer, **Horace Mann**, concludes that this natural right demands the creation of free, public schools, which pass on knowledge of earlier generations.<sup>194</sup> He furthermore places the correlative duty on every government to see that the means of education are provided for all.<sup>195</sup> He stresses that every child has a natural right to education that will enable him to perform all domestic, social, civil, and moral duties, and sees education as being as natural

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<sup>188</sup> Hodgson, 1996, p. 237.

<sup>189</sup> UNESCO, Recommendation, Article 1 (a).

<sup>190</sup> Article 26(1) of the 1948 UDHR.

<sup>191</sup> CESCR, General Comment No.13, 1999, para 1.

<sup>192</sup> Montakef, 2006, p.12.

<sup>193</sup> Grande, 2006, p. 70.

<sup>194</sup> Grande, 2006, p. 70.

<sup>195</sup> Grande, 2006, p. 70.

to the child as breathing and seeing.<sup>196</sup> In other words, “a child without education is poorer and more wretched than a man without bread.”<sup>197</sup>

Additional scholarship brings more viewpoints on the right. **Grande** reports that education is a right whose goal is founded on refuting servitude, and represents an institution available to all persons as an immutable, freely given choice. Meanwhile, author **Richard Pierre Claude** puts it: “Education is intrinsically valuable as humankind's most effective tool for personal empowerment. Education takes on the status of a human right because it is integral to and enhances human dignity through its fruits of knowledge, wisdom and understanding.”<sup>198</sup>

According to **Claude**, this right has a multi-faceted status of being a social, economic and cultural human right. It is a social right because in the context of the community it promotes the full development of the human personality; an economic right because it facilitates economic self-sufficiency through employment or self-employment; and a cultural right because the international community has directed education toward the building of a universal culture of human rights.<sup>199</sup> He further concludes that education is the very prerequisite for the individual to function fully as a human being in modern society.<sup>200</sup>

Finally, the goal of education is development of a human being’s full personality. It frames the holistic concept of human nature as free, social, potentially educated, and entitled to participation in critical decision-making.<sup>201</sup> “Given the goal of the full development of the human personality in the context of society - the only context in which this can occur - it follows that the right to education is a social right, a social good, and a responsibility of society as a whole.”<sup>202</sup>

Considering this, what does it mean to state that there is a human right to education? Article 26 paragraph 2 of the Universal Declaration of Human Rights provides answers through the goals of the education. These are:

- full development of the human personality,
- strengthening of respect for human rights and fundamental freedoms,
- promotion of understanding, tolerance and friendship among all nations, racial or religious groups,
- maintenance of peace.

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<sup>196</sup> Grande, 2006, p. 70.

<sup>197</sup> Grande, 2006, p. 70.

<sup>198</sup> Claude, 2005, p. 37.

Grande, 2006, p. 71.

<sup>199</sup> Claude, 2005, p. 37.

<sup>200</sup> Claude, 2005, p.37.

<sup>201</sup> Claude, 2005, p. 39.

<sup>202</sup> Claude, 2005, p. 40.

Apart from these four main aims of education, here and there in other international and regional legal standards, more aims have been stressed. Intergenerational transmission of cultural heritage,<sup>203</sup> the development of national consciousness,<sup>204</sup> contribution to the economic and social development of the community,<sup>205</sup> the development of a sense of moral duty and social responsibility,<sup>206</sup> the development of the individual's critical ability and judgment,<sup>207</sup> and the development of respect for the natural environment<sup>208</sup> to name a few.

Hence, “education provides a sense of identity and self-respect; it is a measure of a person's accomplishments; it is essential to society and a means of providing freedom.”<sup>209</sup> However, according to **UNICEF** this basic human right, the right to education, is most at risk during emergencies.<sup>210</sup> Humanitarian crises such as wars, earthquakes, tsunamis, floods, and protracted conflict all contribute to disruption of education, delaying initial access, and contributing to higher drop-out and lower completion rates.

It is estimated that 36 per cent of the world's 59.3 million out of school children live in countries scarred by war and violence, whereas over one third of the world's refugee children are not enrolled in primary education.<sup>211</sup>

Figures like these demonstrates that UNICEF's argument stands: Education is critical during emergencies and times of crisis, especially since schools can provide the stability, structure and routine that children need to cope with loss, fear, stress and violence. Being in school keeps children safe and protected from risks, including gender-based violence, recruitment into armed groups, child labor and early marriage.<sup>212</sup>

Children in the context of migration face numerous barriers to education, such as the need to work to support their family and discriminatory refusal of registration.<sup>213</sup> UNICEF warns that

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<sup>203</sup> See Principle 7 Declaration of the Rights of the Child; Article 12(7) Central American Convention; Principle 18(f) Education Recommendation of 1974.

<sup>204</sup> See Article 4 Central American Convention; Article 29(1)(c) Convention on the Rights of the Child.

<sup>205</sup> See Article XII American Declaration of the Rights and Duties of Man; Articles 2 and 12(1) Central American Convention.

<sup>206</sup> See Principle V of the Declaration of Geneva of 1924; Principles 7 and 10 Declaration of the Rights of the Child; Principle VI Declaration on the Promotion Among Youth of the Ideals of Peace; Principles 4(e), 5 and 18(d) Education Recommendation of 1974; Article 5(3) Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

<sup>207</sup> See Principle 7 Declaration of the Rights of the Child; Article 12(4) Central American Convention; Principle 5 Education Recommendation of 1974.

<sup>208</sup> See Article 29(1)(e) Convention on the Rights of the Child; Principle 18(e) Education Recommendation of 1974.

<sup>209</sup> MacKay, 1987, p. 75.

<sup>210</sup> UNICEF (1b), at [http://www.unicef.org/education/bege\\_61685.html](http://www.unicef.org/education/bege_61685.html) (last consulted on 28.11.2015).

<sup>211</sup> UNICEF (1b), at [http://www.unicef.org/education/bege\\_61685.html](http://www.unicef.org/education/bege_61685.html) (last consulted on 28.11.2015).

<sup>212</sup> UNICEF (1b), at [http://www.unicef.org/education/bege\\_61685.html](http://www.unicef.org/education/bege_61685.html) (last consulted on 28.11.2015).

<sup>213</sup> UNICEF (c), 2012, p.2.

undocumented children are at times denied the full enjoyment of the right to education, with restricted access to certification, internships, vocational training, and non-compulsory education, among others. However, legislation that is explicit in its inclusion of all children, regardless of migration status, in all aspects of education, including financial assistance, could remedy this in conjunction with clear guidance and flexible administrative procedures for registration. Consequently, one of the aims of this dissertation is to establish whether the adopted legal standards on the matter are actually applied, in order to ensure the better protection of a right-holder, i.e. asylum-seeking minors.

In general, two main factors stand behind the threatened right to education in Europe. These are: “the sudden and disorganized arrival of large numbers of asylum seeker families, and the inconsistent integration of those seeking refugee status and those who have gained such status”.<sup>214</sup> The right to education of asylum-seeking minors is significantly impacted by the following factors: demographic, psychological, economic, legal and sociological.<sup>215</sup> Hence, its application is the result of the complex combination of the same according to the author **Essomba Miquel Àngel**. This is significant because it highlights the reality ASMs face, realities that are exacerbated when they are in transit. These myriads of factors, not just one alone, all affect the rights ASMs and their families access.

The Program Leader for Inclusive Growth in Central Europe and the Baltics, **Christian Bodewig**, notes that if host countries would ensure quick access to quality education and training opportunities, they would equip the young and disadvantaged generation of refugees with the tools to succeed either in their host country or, in the case of return, in their home country.<sup>216</sup> Education can play a crucial role in transmitting host country values and provide orientation into civic life. Hence, this is worth noting since it illustrates why the right to education should be granted to ASMs since they could permanently stay in Serbia. Education highlights the need to become a functional cell of a society. Education can also help communities avoid segregation or even greater threats of a modern era such as terrorism or violent extremism.

Furthermore, Bodewig has observed education systems throughout Europe and concluded that they often do a poor job in providing opportunities for disadvantaged students. “Poor students are predominantly in schools with many other disadvantaged students, while the privileged stay among themselves. Sometimes segregation manifests itself by school type: In Bulgaria, Slovakia, and Hungary students from disadvantaged backgrounds tend to be disproportionally in vocational secondary schools where the quality of schooling appears poorer and their resulting reading and mathematics skills are weaker [Program for International Student Assessment (PISA)]. Immigrant

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<sup>214</sup> Essomba, 2017, Abstract.

<sup>215</sup> Essomba, 2017, Abstract.

<sup>216</sup> Bodewig, at <https://www.brookings.edu/blog/future-development/2015/11/23/education-is-the-key-to-integrating-refugees-in-europe/> (last consulted on 15.08.2019).

children in many European countries often end up in schools with other disadvantaged students and are more likely than non-immigrant students to be in vocational schools.”<sup>217</sup> This is an indicator of unequal treatment that ASMs face and suggests the need for a state to consider discrimination while providing the access to education itself.

Therefore, when one speaks of the term inclusive education, it does not only apply to inclusion of disabled persons, but of migrant children as well. However, there is no common ground as to whether it should be understood as a legal or moral human right. According to the author **John Stewart Gordon**, scholars in the debate do not actually question the idea that there is a moral human right to inclusive education, but simply take it for granted. “According to them, the normative question of whether one should endorse inclusive education is not a real question; for them it is already clear that inclusive education is better than separate education.”<sup>218</sup>

Another challenge is that inclusive education is said to be expensive, since there is the need for proper buildings, well-equipped classrooms, special training for teachers and additional staff recruitment.<sup>219</sup> Furthermore, there is the question of whether it constitutes an individual or collective right?<sup>220</sup> Or is it a general right that all human beings enjoy? Moreover, who is the bearer of the corresponding obligation to respect, protect and fulfil this human right - individual or collective?

In other words, one must understand that human rights are primarily universal moral norms that bind all people in all places at all times, independently of any legal recognition. Only then can, international legal rights be observed and enforced by nation-states.<sup>221</sup> Therefore, for John Stewart Gordon, the *inclusive education* - i.e., to teach all students in one class - is a moral human right. By contrast, UN proclaims that inclusive education is a legal human right.<sup>222</sup> Eventually, Gordon is of the standpoint that it should not be seen as a human right and hence, in the last instance, also not be seen as a legal right, even though it is a human right from the current legal standpoint.<sup>223</sup>

Put simply, Gordon suggests that the human right to inclusive education is a positive right and stands for a utopian ideal that will never be realized globally, and therefore - since human rights are real and enforceable international basic rights - inclusive education is simply not on the list of

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<sup>217</sup> Bodewig, at <https://www.brookings.edu/blog/future-development/2015/11/23/education-is-the-key-to-integrating-refugees-in-europe/> (last consulted on 15.08.2019).

<sup>218</sup> Gordon, 2013, p. 754.

<sup>219</sup> Gordon, 2013, p. 756.

<sup>220</sup> Gordon, 2013, p. 757.

<sup>221</sup> Gordon, 2013, p. 757.

<sup>222</sup> Gordon, 2013, p. 756.

<sup>223</sup> Gordon, 2013, p. 755.

real human rights.<sup>224</sup> According to Gordon, realizing widespread inclusive education is utopian by nature since one is unable to put this idea into practice.<sup>225</sup>

Nevertheless, whether the right to inclusive education is indeed a legally justified human right depends on the empirical fact of its origin, or better say whether it has been legally authorized in a recognized procedure by the appropriate legal bodies.<sup>226</sup> In that case, one speaks of the right to inclusive education as a legal human right. Additionally, inclusive education means personal and social empowerment, in other words the lack of it leads to social exclusion. Therefore, the basic idea is that it should be promoted by the state so that people could acquire the means, or basic capabilities, to live a good and valuable human life.<sup>227</sup>

Therefore, all relevant human rights legal standards focus on giving *everyone*, especially children, the right of equal access to educational opportunities.<sup>228</sup> However, they do not say anything about the type of education that should be provided. In that sense, authors **Dickson and McCormick** argue for an 'education for humanity', where the goal of education would be the development of 'citizens of the world', people who can play a full and active role in any society, regardless of the family or community setting into which they happen to be born.<sup>229</sup> Consequently, the change of community in which we live, does not strip us of our basic human right, the right to education.

Reviewing judicial decisions on the matter, author **Coomans** provides analysis on how courts have dealt with the right to education when it was evoked before them. They tackle the issue in a twofold manner: One, the right to receive education, and two, the right to choose education.<sup>230</sup> Coomans also argues against the standpoint that economic, social and cultural rights are not on equal footing with civil and political rights, since the former are said not to be justiciable. "Justiciability refers to the ability to claim a remedy before an independent and impartial body when a violation of a right has occurred or is likely to occur", hence, he concludes that there is no right without the remedy.<sup>231</sup> This means that not only is there an established right to education, but that there is a mechanism to bring perpetrators to justice.

One example of this can be found in the ruling of the Supreme Court in India (**M Aohini Jainv. State of Karnataka and Others, 1992 AIR 1858**). The court concluded that the fundamental right to life under Article 21 of the Indian Constitution includes the right to live with human dignity and all that goes along with it.<sup>232</sup> Therefore, the viewpoint of the Court was that the right to education

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<sup>224</sup> Gordon, 2013, p. 758.

<sup>225</sup> Gordon, 2013, p. 760.

<sup>226</sup> Gordon, 2013, p.755.

<sup>227</sup> Gordon, 2013, p. 761.

<sup>228</sup> Dickson & McCormick, 2016, p. 409.

<sup>229</sup> Dickson & McCormick, 2016, p. 409.

<sup>230</sup> Coomans, 2009, p.427.

<sup>231</sup> Coomans, 2009, p. 427.

<sup>232</sup> Coomans, 2009, p. 428.

was implicit with other rights, and not self-standing, i.e. according to this court it flowed directly from the right to life. Similarly, the Inter-American Court of Human Rights has emphasized that the lack of educational facilities for vulnerable groups may constitute a violation of the right to life.<sup>233</sup>

To put things differently, “the protection of life is not limited to negative obligations but may also include positive obligations, such as fostering the rehabilitation and development of children. Such measures may also be read into Article 19 of the American Convention on Human Rights, which deals with the protection of children, and Article 13 of the Protocol of San Salvador, which provides for the right to education.”<sup>234</sup> Additionally, courts in the USA have made a stand that education is not only a right but rather a responsibility of the state authorities.<sup>235</sup> The judicature places the obligation on the state bodies to act, i.e. it is not enough to have adopted laws on the matter, but rather to take additional effort to apply them to all under their jurisprudence.

With regards to application, former UN Special Rapporteur **Katarina Tomasevski** created an “A scheme”, which reinforces the obligation of governments to respect, protect and implement the right to education.<sup>236</sup> The “A scheme” is an analytical scheme based on the four essential features that primary school should exhibit. The four As refer to *availability* of education, i.e. educational services of different types and levels have to be made available, free and compulsory; *accessible* to all; *acceptable* for pupils and parents; and *adaptable* to the needs of learners. The second key feature of the right to education refers to non-discrimination, particularly that it has to be accessible in law as well as in fact.<sup>237</sup> It has to be physically accessible either through safe physical reach or distance learning. Another key feature is that it must be affordable.

Acceptability of education is also worth mentioning here. Acceptability means that the form and substance of education, including curricula and teaching methods, have to be relevant, culturally appropriate and of good quality for students and parents.<sup>238</sup> It must also include respect for the linguistic, cultural and religious rights of minorities and indigenous groups in education.<sup>239</sup> This is important for a society in order to be able to fully embrace and integrate newcomers.

The non-discriminatory element stresses the obligation of states to provide access to education to so-called *undocumented children* as well.<sup>240</sup> The term “undocumented children” refers to children that do not have an official residence permit. The question of accessibility appeared before the US

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<sup>233</sup> Coomans, 2009, p. 429.

<sup>234</sup> Coomans, 2009, p. 429.

<sup>235</sup> Coomans, 2009, p. 429.

<sup>236</sup> Coomans, 2009, p.427.

<sup>237</sup> Coomans, 2009, p. 434.

<sup>238</sup> Coomans, 2009, p. 440.

<sup>239</sup> Coomans, 2009, p. 440.

<sup>240</sup> Coomans, 2009, p. 434.

**Supreme Court in Plyler v. Doe.**<sup>241</sup> The Court dealt with the question of whether or not it was in accordance with the Equal Protection Clause of the Fourteenth Amendment to the US Constitution for the State of Texas to deny undocumented school-age children the free public education that was provided to US citizens and legally admitted aliens. The action was filed on behalf of a number of school-age children of Mexican origin who had not been legally admitted to the United States. The Court ruled that the clause 'any person within its jurisdiction' extends to anyone, citizen or stranger, who is subject to the laws of a state. Bottom line, the state cannot *absolutely deny* a child an education.<sup>242</sup>

This view is shared by the philosopher **Harry Brighouse**, who expresses the view that autonomy holds the key for a good life, hence all children should be subject to an education designed to provide access to autonomy. It is the responsibility of the state to ensure that all children have a real opportunity to enter good, autonomous ways of life.<sup>243</sup> Moreover, **the 1966 Recommendation concerning the Status of Teachers**, para 10 (c) stresses that because education is a service of fundamental importance in the general public interest, it should be recognized as a responsibility of the State.

Previously mentioned judicial reviews are significant because they serve as arguments that confirm Cooman's theory that there is no right without a remedy; they acknowledge the existence of the right to education, but at the same time they justify the standpoint that a state has an obligation to provide it to ASMs.

"What is decisive [in the case *Plyler v. Doe*], is the presence of such a person on a state's territory. For that reason, he or she is entitled to the equal protection of the laws of that state. The judgment is an important one, because it stresses the value that education has for the personal development of people and society as a whole."<sup>244</sup> The court further concluded "illiteracy is an enduring disability. The inability to read and write will handicap the individual deprived of a basic education each and every day of his life... [and that] education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of society."<sup>245</sup> Consequently, the court finding stands as a solid argument on the justification of the right to education.

Additional cases placing the obligation on a state to provide education are the case of **Lau v. Nichols** and case **Flores v. Reno**. In the former, the Burger Court reinforced that states cannot

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<sup>241</sup> Coomans, 2009, p. 436.

<sup>242</sup> Wilson, 2000, p. 389.

<sup>243</sup> Brighouse, 2005, p. 2.

<sup>244</sup> Coomans, 2009, p. 436.

<sup>245</sup> Coomans, 2009, p. 436.



deny an undocumented child equal access to a public education because of her or his immigration status or language background.<sup>246</sup>

In the latter case, **Flores v. Reno**, 507 U.S. 292, 298 (1993), the Court argues that “the facilities must provide, in accordance with 'applicable state child welfare statutes and generally accepted child welfare standards, practices, principles and procedures,'... an extensive list of services, including physical care and maintenance, individual and group counseling, education, recreation and leisure-time activities, family reunification services, and access to religious services, visitors, and legal assistance.”<sup>247</sup>

While these cases highlight important needs for the state to fulfil to those in the general population, author **Acosta Jeanette** notes that little to no attention is being provided to the educational services for unaccompanied minors living in detention centers, shelters, and, eventually, public schools.<sup>248</sup> In addition, transit and reception centers on the Western Balkans route are of a poor standard, lacking basic sanitation facilities and proper winter isolation, calls for attention, since most of ASMs spend months in these facilities, being deprived of education. This renders them open to various abuses and could eventually account for double victimization.

By contrast, the **European Network of Ombudspersons for Children** reports that in most of its member countries access to education for children on the move is assessed to be good.<sup>249</sup> “Good” means the legal right of children to receive education has been laid down in regulations, hence most ASMs go to school, independent of their legal status.<sup>250</sup> However, the situation is different for children who have recently arrived in their country of destination. For instance, in the countries faced with a large influx of asylum seekers, immediate inclusion into the education system is far from guaranteed.<sup>251</sup>

“In **Belgium**, the Federal Agency for the Reception of Asylum seekers appears to have issued an instruction not to enroll children in a school if they reside in a temporary location for a short period of time, which can still amount to two months or longer. In the meantime, in one case the Flemish Ministry of Education has organized school classes inside such a transit center. However, in another case about 50 children were still not enrolled in a school after 3 months despite the readiness of a nearby school to enroll them. In the French speaking part of Belgium, the demand for education for newly arriving immigrant children exceeds the current capacity of reception classes for non-French speaking newcomers. In **the Netherlands**, children do not go to school in provisional shelters organized by municipalities. Children in emergency shelters have to wait for weeks or sometimes even a

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<sup>246</sup> Acosta, 2016, p.649.

<sup>247</sup> Acosta, 2016, p.650.

<sup>248</sup> Acosta, 2016, p. 650.

<sup>249</sup> ENOC, 2016, p.22.

<sup>250</sup> ENOC, 2016, p. 22.

<sup>251</sup> ENOC, 2016, p. 22.

few months before they can go to school. Schools and municipalities that are not experienced with education for newly-entered children, face many practical and bureaucratic challenges to get education organized. Because asylum seekers have to move many times from shelter to shelter, continuity of education is a big problem in the Netherlands as well.”<sup>252</sup>

“**Sweden** does not offer education for children in emergency shelters, besides a few hours a week for a language course in some shelters. In the last concluding observations to Sweden from the Committee on the Rights of the Child in 2015, the Committee advised Sweden to ‘amend its legislation to ensure that children considered as being “in transit” are provided with full access to education’<sup>253</sup>. Children on the move have the right to education within a month after arrival in the municipality they are to reside in during the asylum process. Many municipalities have difficulties in meeting this requirement. In **the UK**, local authorities with larger numbers of unaccompanied children in their care have difficulties finding enough school places as well. In **Estonia**, the situation in detention facilities is alarming. Children in detention do not go to school, nor do they have access to other training or educational services. This used to be the case in **Poland** as well. The Ombudsman for Children has long advocated that child migrants in detention should have access to educational programmes. In 2014, a provision was included in the new Act on Foreigners which provided for the right to education for these children.”<sup>254</sup>

“Both **Greece** and **Italy** stress that access to education is problematic for children who are still on their way to their destination country. When children arrive in their country of destination, they have usually been deprived of education for at least the duration of their journey, often weeks to months. Due to armed conflict or a general lack of education facilities in their home country and countries that they have temporarily resided in, there is an education gap of years for many of these children.”<sup>255</sup>

Nevertheless, from the perspective of children’s rights, since the implementation of the EU’s asylum instruments is lacking, EU institutions and agencies, as well as the Member States, need to intensify efforts spent on training personnel involved with children on the move. They also need to ensure the full implementation of the protection of rights guaranteed in both EU instruments and international human rights law.<sup>256</sup> Furthermore, ENOC notes that a new EU Agenda on children on the move is needed.<sup>257</sup>

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<sup>252</sup> ENOC, 2016, p. 22.

<sup>253</sup> See CRC/C/SWE/CO/4 Concluding observations on the fifth periodic report of Sweden adopted by the Committee at its 68th session (12 – 30 January 2015), Committee on the Rights of the Child, 4 February 2015 paragraph 51.

<sup>254</sup> ENOC, 2016, p.23.

<sup>255</sup> ENOC, 2016, p. 23.

<sup>256</sup> ENOC, 2016, p. 27.

<sup>257</sup> ENOC, 2016, p. 27.

On the other hand, ASMs accompanying their parents, children not applying for asylum and stateless children receive very little attention in EU discussions and policies.<sup>258</sup> In addition, action plans that the EU has agreed upon with Turkey and Western Balkan countries lacks a child rights perspective in that it does not include any specific actions with regards to children.<sup>259</sup>

In particular, the best interest of the child is not assessed nor considered a primary consideration in actions and decisions regarding children on the move. Children are not being heard, they do not receive information about what is happening to them, they are deprived of their right to education for extended periods of time, and there is the problem of exercising their right to healthcare and rehabilitation, particularly psychological support.<sup>260</sup>

When it comes to barriers, the main obstacle blocking children's ability to exercise their right to education in developing countries is halting poverty.<sup>261</sup> Lack of funds prevents authorities from building new schools and maintaining existing ones, operating teacher training colleges, recruiting competent staff and ensuring supplies.<sup>262</sup> Similarly, it is poverty that makes it difficult for families to either pay school fees and the cost of books and school materials, or, when schooling is free, to send a child to school when that child's work contributes to the meagre family budget.<sup>263</sup>

All in all, ASMs are entitled to the right to education, however there are various obstacles that stand in the way of their right to education, among them international and internal armed conflict, foreign debt, international disparities, and environmental degradation.<sup>264</sup> Furthermore, the lack of effective machinery to oversee the implementation of the right to education is yet another obstacle. Even though international legal instruments have relevant monitoring bodies, the reporting process has been characterized particularly by low response rates from Member States and the poor quality and incomplete nature of the reports submitted.<sup>265</sup>

Notwithstanding, the state receiving the child is the one that has the obligation to provide access to education to everyone under its jurisprudence. While bearing in mind how quickly the topic evolves, this dissertation seeks to provide assistance to international, regional<sup>266</sup> and domestic bodies seeking to identify good practice examples and contributes to the empowerment of a right-holder.

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<sup>258</sup> ENOC, 2016, p. 29.

<sup>259</sup> ENOC, 2016, p. 31.

<sup>260</sup> ENOC, 2016, p. 36.

<sup>261</sup> Hodgson, 1996, p.261.

<sup>262</sup> Hodgson, 1996, p.261.

<sup>263</sup> Hodgson, 1996, p.261.

<sup>264</sup> Hodgson, 1996, p.261.

<sup>265</sup> Hodgson, 1996, p. 262.

<sup>266</sup> Council of Europe, Action Plan 2017-2019, p. 18.

## Chapter I

The first section of this Chapter deals with the right to education and international legal standards that regulate this right. It also provides information on why this is relevant for ASMs. In the second part of the Chapter, I define to whom I will be referring when using the term asylum-seeking minors. I write about special protection of asylum-seeking minors under international law, children's vulnerability in the refugee context, and I conclude that International Refugee Law cannot be applied irrespective of international human rights law, international humanitarian instruments, and international customary law. Furthermore, I argue that proper cooperation of domestic and international initiatives and agencies must be ensured in order to achieve effective protection of the asylum-seeking minor's rights.

### 1. The right to education

The right to education represents a crucial part of contemporary human rights law, and although it is generally considered to be either social or cultural right, it is also very much related to other human rights.<sup>267</sup> Education is considered to be a precondition for the exercise of human rights and, moreover, strives to strengthen them at the same time.<sup>268</sup>

Enjoyment of all human rights is dependent on at least a minimum level of education, including literacy.<sup>269</sup> For instance, enjoyment of respective civil and political rights, such as freedom of expression, the right to vote and be elected, freedom from torture, inhuman or degrading treatment or unlawful imprisonment, depend on at least a minimum level of education.<sup>270</sup> The same applies to the enjoyment and the exercise of many social, economic and cultural rights. For instance, the right to choose work, the right to receive equal pay for equal work, and the right to take part in cultural life are all right that can only be truly fulfilled if a minimum level of education is acquired.<sup>271</sup>

Furthermore, even though the aims and objectives of education may vary across the globe (i.e. respective historical, political, cultural, religious or national context) there is a growing consensus under present international law that tolerance and respect for human rights shall be the major characteristics of educated human beings.<sup>272</sup>

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<sup>267</sup> Dr. Nowak, 2001, p.245.

<sup>268</sup> Dr. Nowak, 2001, p.245.

<sup>269</sup> Dr. Nowak, 2001, p.245.

<sup>270</sup> Dr. Nowak, 2001, p.245.

<sup>271</sup> Dr. Nowak, 2001, p.245.

<sup>272</sup> Dr. Nowak, 2001, p.245.

Education is arguably one of the primary means to successful promotion of human rights, while human rights education at all levels is the most important means to creating a universal human rights culture.<sup>273</sup>

### History of the right to education

When it comes to the right to education, one primarily understands the right of a child or young person to receive education provided by the state.<sup>274</sup> However, one needs to note that this right might also imply a number of other bearers of rights and duties, which may lead to complex legal relationships.<sup>275</sup>

Education can be understood as a process and as a stage within a process.<sup>276</sup> In other words, education of children is made up of different forms of teaching. On the one hand, society's adults teach by transmitting their beliefs, culture, and other values to the young, and, on the other hand, teaching can also refer to the transfer of knowledge and to intellectual development.<sup>277</sup> With respect to *the process*, it can involve different actors who may have different and sometimes competing claims that form their idea of what it means to fulfil the right to education.<sup>278</sup> In particular, these actors may be distinguished as: the one who receives the education (a child, a pupil, a student), the one who provides education (the teacher, the parents, the one who owns the educational institution), and/or the one who is legally responsible for the child who receives education (the parents, the legal guardians, society and the state).<sup>279</sup>

Historically, education has been characterized by two major concerns of cultures and peoples. One aim has been to transmit the technical skills necessary to master the tasks of daily life to the next generation, and another aim has been to influence philosophical, religious, cultural and social values of the respective peoples and societies.<sup>280</sup>

Furthermore, education was primarily considered to be a concern of parents in the Enlightenment period in Europe, hence it was only with the emergence of the secular state that education started to be a matter of public concern.<sup>281</sup> In other words, during the 18<sup>th</sup> century, most European states attempted to regulate the complex educational relationships between children, the parents, the

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Please also see Article 13(1) of the CESCR, Article 26(2) of the UDHR, Article 5 (1) of the UNESCO Convention against Discrimination in Education, and Article 29 (1)(b) of the Convention on the Rights of the Child.

<sup>273</sup> Dr. Nowak, 2001, p.245.

<sup>274</sup> Dr. Nowak, 2001, p.246.

<sup>275</sup> Dr. Nowak, 2001, p.246.

<sup>276</sup> Dr. Nowak, 2001, p.246.

<sup>277</sup> Dr. Grabenwarter, 2014, p. 390.

<sup>278</sup> Dr. Nowak, 2001, p.246.

<sup>279</sup> Dr. Nowak, 2001, p.246.

<sup>280</sup> Dr. Nowak, 2001, p.246.

<sup>281</sup> Dr. Nowak, 2001, p.247.

Church and other owners of educational institutions by means of, for instance, mandatory school attendance.<sup>282</sup>

During the 19<sup>th</sup> century, liberal thoughts on education meant an evolution of how the right itself was fulfilled. Initially the duty of parents to provide education, parent's liberty to choose education within certain limits established by law, and the state's duty to guarantee that every child receives adequate education by means of mandatory school attendance and the legal regulation of school curricula, all meshed together to enable the evolution of the right. It was actually the socialist concept of human rights that marked the shift of the primary education being the obligation of a state to provide.<sup>283</sup>

One such socialist example can be found in Article 121 of Stalin's 1936 Soviet Constitution. It was here that an explicit human right to receive education with the corresponding duty of a state to provide education was enshrined in state policy for the first time.<sup>284</sup> Since then, the right to education has been recognized at the international level by a variety of universal and regional instruments that were adopted after the Second World War in a way that reflected both liberal and socialist human rights concepts.<sup>285</sup> The coverage of these international legal standards will be provided in the following sections.

#### Generations of human rights

Nowadays, one can distinguish between three so-called human rights generations: the first generation is comprised of civil and political rights, the second generation of economic, social and cultural rights, and the third generation of solidarity or group rights.<sup>286</sup> However, it is important to note that all human rights are interdependent, indivisible and interrelated, hence there is no hierarchy among them.<sup>287</sup> The theory of separate human rights generations simply reflects how the major categories of human rights have emerged throughout political philosophy and history of national constitutions and international law.<sup>288</sup>

The case could be made that the right to education reveals aspects that could fall under all three generations, judging from the wording of the universal and regional human rights instruments.<sup>289</sup> The right to education, as set forth in Article 13 of the CESC, Article 28 of the CRC and Article 13 of the Protocol of San Salvador is at its core *a second generation right*.<sup>290</sup> Furthermore, it is one

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<sup>282</sup> Dr. Nowak, 2001, p.247.

<sup>283</sup> Dr. Nowak, 2001, p.247.

<sup>284</sup> Dr. Nowak, 2001, p.248.

<sup>285</sup> Dr. Nowak, 2001, p.248.

<sup>286</sup> Dr. Nowak, 2001, p.252.

<sup>287</sup> Dr. Nowak, 2001, p.252.

<sup>288</sup> Dr. Nowak, 2001, p.252.

<sup>289</sup> Dr. Nowak, 2001, p.252.

<sup>290</sup> Dr. Nowak, 2001, p.252.

of the most outstanding examples of *cultural rights*, even though many scholars claim it be a social, right, as well.<sup>291</sup>

The right to education as a second-generation right is based on the socialist philosophy that, in order for it to be fulfilled, requires positive state action.<sup>292</sup> Therefore, the right to education obliges states to develop and maintain a system of schools and other education institutions in order to ensure education to everybody, and, if possible, free of charge.<sup>293</sup>

Combined with the right to work (the most fundamental economic right), and the right to an adequate standard of living (the most comprehensive social right), the right to education represents one of the basic means needed by a human being in order to be able to fully develop his or her personality.<sup>294</sup>

As previously mentioned, second generation rights require a positive action by the state. That is, the right to education places a special duty on the state to ensure it to everybody without discrimination and to combat any existing inequalities in the access to and enjoyment of the right, by legislative and other means.<sup>295</sup> The relevant obligations of the state to promote equality of opportunity in education are stipulated in the 1960 UNESCO Convention against Discrimination in Education.<sup>296</sup>

In particular, one of the methods to promote equality of opportunity is to make education free and compulsory until a certain age.<sup>297</sup> However, education is one of a few human rights for which it is universally accepted that the individual has a corresponding duty to exercise this right.<sup>298</sup>

This concept brings us back to what was previously mentioned: the right to education falls into the category of *the first generation rights* as well.<sup>299</sup> Even though the bills of rights that emerged during the American and French Revolutions did not contain any clause on the right to education, the increasing influence of liberalism on the definition of constitutional rights meant the states began to see and implement this right differently.<sup>300</sup> In other words, these educational rights set forth liberal and anticlerical ideas of freedom of science, research, teaching, education and profession against interference by the state and the Church.<sup>301</sup> To simplify, the first generation of human rights is known by the negative action by the state, i.e. the state has the obligation to refrain from taking action. This non-action enables a right holder to enjoy his or her right.

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<sup>291</sup> Dr. Nowak, 2001, p.253.

<sup>292</sup> Dr. Nowak, 2001, p.253.

<sup>293</sup> Dr. Nowak, 2001, p.253.

<sup>294</sup> Dr. Nowak, 2001, p.253.

<sup>295</sup> Dr. Nowak, 2001, p.253.

<sup>296</sup> Dr. Nowak, 2001, p.253.

<sup>297</sup> Dr. Nowak, 2001, p.253.

<sup>298</sup> Dr. Nowak, 2001, p.253.

<sup>299</sup> Dr. Nowak, 2001, p.253.

<sup>300</sup> Dr. Nowak, 2001, p.253.

<sup>301</sup> Dr. Nowak, 2001, p.253.

Similarly, negative state obligations can be found in international human rights treaties adopted after World War II, such as Article 2 of Protocol No.1 to the ECHR, which sets forth that “no person shall be denied the right to education.” As such, it guarantees equal access to already existing educational institutions.<sup>302</sup> However, the main emphasis of this provision is on the state’s duty to refrain from action, i.e. to respect the parent’s rights to ensure the education and teaching in conformity with their own religious and philosophical convictions.<sup>303</sup> In addition, the same protection from undue state interference with parent’s rights on this matter can be found in Article 12(4) of the ACHR, Article 18(4) of the ICCPR, Article 13(3) of the ICESCR and Article 13 (4) of the Protocol of San Salvador.<sup>304</sup>

Further negative obligation of the state is reflected in the prohibition of interference with the autonomy of universities where they determine their own research and teaching policies.<sup>305</sup> For instance, Articles 13 (3) and 13 (4) of the ICESCR, Article 28(2) of the CRC and Article 13 (5) of the Protocol of San Salvador guarantee the liberty of individuals and bodies to establish and direct educational institutions in conformity with certain minimum standards laid down by the state.<sup>306</sup>

Finally, a link with so-called third generation rights, or solidarity rights, can be explored. Article 28 (3) of the CRC obliges states to “promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard particular account shall be taken of the needs of developing countries.”<sup>307</sup> The general plea of this provision calls for academic cooperation, which is of particular importance in North-South relations.<sup>308</sup> In addition, according to modern development theories, it is both the right to education and the right to development that share the ultimate goal, the full respect for and protection of all human rights.<sup>309</sup>

### **The right to receive education**

The right to *receive* education constitutes the core of the right to education under international law.<sup>310</sup> Particularly, the most relevant provisions on this matter are Article 26 of the UDHR, Article 13 and 14 of the ICESCR, Articles 28 and 29 of the CRC, and Article 13 of the San Salvador.<sup>311</sup>

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<sup>302</sup> Dr. Nowak, 2001, p.254.

<sup>303</sup> Dr. Nowak, 2001, p.254.

<sup>304</sup> Dr. Nowak, 2001, p.254.

<sup>305</sup> Dr. Nowak, 2001, p.254.

<sup>306</sup> Dr. Nowak, 2001, p.254.

<sup>307</sup> Dr. Nowak, 2001, p.254.

<sup>308</sup> Dr. Nowak, 2001, p.255.

<sup>309</sup> Dr. Nowak, 2001, p.255.

<sup>310</sup> Dr. Nowak, 2001, p.255.

<sup>311</sup> Dr. Nowak, 2001, p.255.



The right to education of every human being, and of children in particular, imposes corresponding obligation on the state's part to fulfil the right to education by means of positive action.<sup>312</sup>

Article 2 (1) of the ICESCR, Article 28 (1) of the CRC and Article 1 of the Protocol of San Salvador define these obligations as *progressive obligations*, which means that every state will take what steps they are capable of "to the maximum of its available resources, with a view to achieving progressively the full realization of the rights concerned."<sup>313</sup>

Furthermore, most provisions establish the *obligation of result*, e.g. a) primary education shall be free and compulsory for all; b) secondary education shall be available and accessible to all, however, free education and financial assistance when needed shall be introduced progressively; c) higher education shall be accessible subject to capacity and free education shall be introduced progressively; d) basic education shall be intensified for those who did not complete primary education; e) introduction and development of programmes of special education for the handicapped; and f) elimination of ignorance and illiteracy.<sup>314</sup>

On the other hand, other provisions establish an *obligation of conduct*, demanding a certain action or measure on the state's part.<sup>315</sup> For instance, Article 14 of the ICESCR sets forth that a state at the time of becoming a Party "undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all." The UN Committee on Economic, Social and Cultural Rights stressed the obligatory character of this provision in its General Comment on Article 14. Here they stated that economic, financial or other difficulties "cannot relieve States parties of their obligation to adopt and submit a plan of action to the Committee".<sup>316</sup> It is important to note that even though the Committee did not use the word "violation", it leaves no doubt that it would consider such a failure as a violation.<sup>317</sup>

Obligations of conduct are easier to monitor than obligations that require production of tangible results.<sup>318</sup> That is, if a state party to ICESCR fails to adopt an action plan envisaged in the above mentioned Article 14 of the ICESCR within two years, this would represent an obvious violation of the state's obligations under international law.<sup>319</sup> Therefore, it is much more difficult to monitor and assess the compliance to obligations of producing a result, which leads to controversial question of reliable indicators and national benchmarks.<sup>320</sup>

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<sup>312</sup> Dr. Nowak, 2001, p.255.

<sup>313</sup> Dr. Nowak, 2001, p.256.

<sup>314</sup> Dr. Nowak, 2001, p.256.

<sup>315</sup> Dr. Nowak, 2001, p.256.

<sup>316</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No.11, 1999, para 3.

<sup>317</sup> Dr. Nowak, 2001, p.256.

<sup>318</sup> Dr. Nowak, 2001, p.256.

<sup>319</sup> Dr. Nowak, 2001, p.256.

<sup>320</sup> Dr. Nowak, 2001, p.256.

Firstly, one important objective of indicators would be to separate unwillingness from incapacity. Secondly, the analysis and documentation of trends should take precedence over the widespread usage of cross-national comparisons and ranking of states.<sup>321</sup> Therefore, the emphasis should be placed on cross-temporal measures when assessing the situation in a given state.<sup>322</sup> “In the field of education typical indicators to be applied in a cross-temporal perspective are, for example, literacy rates, primary, secondary and tertiary enrollment ratios, completion and drop-out rates, primary pupil-teacher ratio or public expenditure on education as a percentage of GNP or of the total public expenditure or in comparison to other expenditures, for example, for military purposes. In addition, all quantitative indicators must be interpreted in the context of the overall economic and political situation taking into account factors such as a deterioration in terms of trade, or a situation of international or internal armed conflict, etc.”<sup>323</sup> Consequently, only careful analysis of these indicators during the period of several years can serve to show whether the government has actually complied with or violated specific obligations of the result.<sup>324</sup>

Once the violation has occurred, it is necessary to identify *the root causes of the violation* of the right to education. For example, if poverty is the main reason people are denied the right to education, the method of assessment and the strategy to overcome this impediment must differ from those having the government deny to right to access the education to a certain group, as matter of its policy.<sup>325</sup> However, bearing in mind what was previously mentioned, lack of economic means cannot be accepted as justification if the actual minimum core of the right to education has not be guaranteed for a continuous period.<sup>326</sup> In particular, as it has been stressed in General Comment No. 11 of the UN Committee on Economic, Social and Cultural Rights, “where a State party is clearly lacking in the financial resources and/or expertise required to “work out and adopt” a detailed plan, the international community has a clear obligation to assist.”<sup>327</sup>

It is important to note that the corresponding obligation to the right to receive education is directed towards the state, hence, it only obliges governments to provide for adequate educational facilities.<sup>328</sup> It is the government that must ensure that all conditions foreseen by international law, such as free and compulsory education, are guaranteed by the means of legislative measures, state supervision, and subsidies.<sup>329</sup> The state has the obligation to protect the enjoyment of the right to education on the horizontal level, i.e. when both state owned and private facilities exist.<sup>330</sup> However, regarding access to primary education, it is commonly assumed in the literature that

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<sup>321</sup> Dr. Nowak, 2001, p.257.

<sup>322</sup> Dr. Nowak, 2001, p.257.

<sup>323</sup> Dr. Nowak, 2001, p.257.

<sup>324</sup> Dr. Nowak, 2001, p.257.

<sup>325</sup> Dr. Nowak, 2001, p.257.

<sup>326</sup> Dr. Nowak, 2001, p.257.

<sup>327</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No.11, 1999, para 9.

<sup>328</sup> Dr. Nowak, 2001, p.257.

<sup>329</sup> Dr. Nowak, 2001, p.257.

<sup>330</sup> Dr. Nowak, 2001, p.257.-258.

states have an obligation to provide for the existence and maintenance of a minimum of educational facilities.<sup>331</sup>

If a government wants to prevent certain group of people from equal participation in the political, social, economic or cultural life in their countries, it would be enough to deny them equal access to education or to maintain segregated educational facilities with different educational standards; which unfortunately does happen in practice when a government wants to discriminate against ethnic, religious or linguistic groups.<sup>332</sup>

The right to education is the only human right that international law foresees as having a corresponding duty, that corresponding duty being compulsory education until the end of primary education.<sup>333</sup> Similarly, states have the right and the duty to provide for education and to compel children until they reach a certain age to attend school.<sup>334</sup>

In addition, compulsory education is one of the means that a state utilizes to protect children from their parents who may try to exploit them economically.<sup>335</sup> At the same time, parents are protected against totalitarian tendencies in education by the right to establish private schools and to choose the type of education their children would receive.<sup>336</sup>

However, it is children themselves who seem not to have the right to choose their own education under present international law.<sup>337</sup> Therefore, children are under legal duty to attend the school that is chosen by their parents among existing public and private institutions, both of which have to conform to certain minimum standards of education set by the state.<sup>338</sup>

In addition, the issue of financing private educational facilities is controversial. Particularly the question of whether a state has or should have the obligation to finance them has led to heated debates. All applications submitted by private schools against European countries such as Sweden, France, and the UK have been rejected at the admissibility stage with regard to Article 2 of Protocol No.1 to the ECHR, though the UN Human Rights Committee ruling on Article 26 of the ICCPR has decided that a state could not be deemed to discriminate against parents who freely choose not to avail themselves of benefits which are generally open to all.<sup>339</sup>

Furthermore, economic, social and cultural rights usually establish claims against states to provide certain services. However, there is no mention in Article 13 of the ICESCR as to whether or not the individual will decide to make use of this public service and to choose among various educational institutions. The ICESCR simply states that parents have the freedom to choose the

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<sup>331</sup> Dr. Nowak, 2001, p.259.

<sup>332</sup> Dr. Nowak, 2001, p.259.

<sup>333</sup> Dr. Nowak, 2001, p.259.

<sup>334</sup> Dr. Nowak, 2001, p.259.

<sup>335</sup> Dr. Nowak, 2001, p.262.

<sup>336</sup> Dr. Nowak, 2001, p.262.

<sup>337</sup> Dr. Nowak, 2001, p.262.

<sup>338</sup> Dr. Nowak, 2001, p.262.

<sup>339</sup> Dr. Nowak, 2001, p.265.

kind of education that shall be given to their children in accordance with their own religious, moral or philosophical convictions.<sup>340</sup>

### **Positive obligations of the State**

According to Article 2 of Protocol No.1 to the ECHR, a right of access to educational institutions is guaranteed at existing educational institutions at the given time.<sup>341</sup> This means that the right to education refers to education received in school, and universally positive obligations imposed on the state derive from Article 13 of the ICESCR. These are: a) to provide free and compulsory primary education; b) to make secondary and higher education generally accessible; c) to encourage and intensify fundamental education of adults or those who have not completed their primary education; d) to improve the material conditions of teaching staff.

Regarding the right to education of disabled children, protection under the ECHR is weak and generally does not impose the obligation on the state to grant access to regular school in case a state has established special schools for disabled persons.<sup>342</sup> In other words, disabled children do not have rights that go beyond the general right to access a school, nor is there an obligation placed on the state to establish special schools.<sup>343</sup>

Furthermore, it is a generally necessary element of the right to education to be able to enjoy the fruits of it. Once the diploma/degree has been accomplished, the state is obligated to recognize the diploma/degree issued at both state-owned and privately-owned educational institutions.<sup>344</sup>

The right to education is not an absolute right, therefore certain interference is allowed, but that interference still has to meet the principle of proportionality.<sup>345</sup> Vitally, there shall be no regulation that can injure the very essence of the right to education.<sup>346</sup>

Member States to the ECHR and Protocol No. 1 reserve a wide margin of appreciation when it comes to Article 2—the right to education. Moreover, Article 2 does not require states to establish at their own expense, or subsidized, education of any particular type, nor does it provide for a right of access to particular school.<sup>347</sup> Similarly, regarding universities, there is no duty to offer unlimited number of university places in order to ensure that everyone interested can begin their studies of interest.<sup>348</sup>

However, the expulsion of pupils from school does constitute interference with the right to education, and can be justified depending on the level of education and on the circumstances that

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<sup>340</sup> Dr. Nowak, 2001, p.259.

<sup>341</sup> Dr. Grabenwarter, 2014, p. 390.

<sup>342</sup> Dr. Grabenwarter, 2014, p. 391.

<sup>343</sup> Dr. Grabenwarter, 2014, p. 391.

<sup>344</sup> Dr. Grabenwarter, 2014, p. 391.

<sup>345</sup> Dr. Grabenwarter, 2014, p. 392.

<sup>346</sup> Dr. Grabenwarter, 2014, p. 392.

<sup>347</sup> Dr. Grabenwarter, 2014, p. 392.

<sup>348</sup> Dr. Grabenwarter, 2014, p. 392.

led to the violation.<sup>349</sup> Similarly, fees for pupils and students in secondary or higher education are considered interference that may be justified under certain conditions.<sup>350</sup> In particular, States have the right to regulate access to education, and whether or not to charge fees for it and to whom. States must also though strike a balance between the educational needs of those under its jurisdiction and its limited capacity to accommodate them.<sup>351</sup>

Furthermore, the higher the level of education, the bigger margin of appreciation there is for states to decide on educational matters. For instance, university level education still remains out of reach for many. High fees and even higher fees for aliens are common and generally justified.<sup>352</sup>

The state has the obligation to respect parent's religious and philosophical convictions, meaning that it denotes views that attain a certain level of seriousness, cohesion and importance.<sup>353</sup> While it can be easy to determine religious convictions, the definition of philosophical ones is much more difficult. Hence, the ECtHR defines them as convictions that are worthy of respect in democratic societies that are not incompatible with human dignity, and they do not conflict with the child's fundamental right to education.<sup>354</sup>

Regarding the language used in teaching, Article 2 of Protocol No. 1 to the ECHR does not guarantee respect of a right for parents to have education conducted in a language other than of the given country.<sup>355</sup> Under the same Article, there is no right to home schooling, even if parents would find school education contrary to their convictions.<sup>356</sup>

There is no explicit right for parents saying the State must define the aims and adjust the content and methods of education to parent's particular convictions. The state must only grant them the right to leave, or the state must provide alternative education programmes where applicable.<sup>357</sup>

When it comes to setting and planning of the curriculum, it is the state's duty to ensure that the knowledge and information included in the curriculum is conveyed in an objective, critical and pluralistic manner.<sup>358</sup> Hence, the state is forbidden to pursue an aim of indoctrination.<sup>359</sup>

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<sup>349</sup> Dr. Grabenwarter, 2014, p. 392.

<sup>350</sup> Dr. Grabenwarter, 2014, p. 392.

<sup>351</sup> Dr. Grabenwarter, 2014, p. 392.

<sup>352</sup> Dr. Grabenwarter, 2014, p. 392.

<sup>353</sup> Dr. Grabenwarter, 2014, p. 395.

<sup>354</sup> Dr. Grabenwarter, 2014, p. 395.

<sup>355</sup> Dr. Grabenwarter, 2014, p. 395.

<sup>356</sup> Dr. Grabenwarter, 2014, p. 395.

<sup>357</sup> Dr. Grabenwarter, 2014, p. 396.

<sup>358</sup> Dr. Grabenwarter, 2014, p. 397.

<sup>359</sup> Dr. Grabenwarter, 2014, p. 398.

## Human Rights Education

Human Rights Education is about knowing human rights, but also about respecting and protecting them.<sup>360</sup> Human Rights Education is generally seen as a prerequisite for individuals or groups to expect and demand respect for their human rights and freedoms.<sup>361</sup>

The goal of human rights education then is to foster a culture of human rights. Two basic principles or directions characterize a human rights culture: a) learning *about* human rights, and (b) learning *for* human rights.<sup>362</sup> “The first area, learning about human rights, comprises knowledge of the genesis, history and relevance of human rights and central human rights documents as well as internationally established instruments for their realization. Learning and teaching about human rights also involves participants getting to know the different facets and controversies of the international discourse – including the various actors on the national and international levels.”<sup>363</sup>

The specific subject(s) to be taught in human rights education emerge from international human rights instruments themselves. Related, the topics should include equal rights and opportunities across the spectrum of civil, political, social, economic and cultural rights, including, but not limited, to dignity, liberty, the human rights of vulnerable categories of people, such as women, children, refugees, the elimination of discrimination, life in free and democratic society, etc.<sup>364</sup> Furthermore, human rights education should encompass both the theoretical and practical dimension.<sup>365</sup>

All human rights programmes entail this first dimension of human rights education, and most of them proceed further to the second dimension: learning *for* human rights, where the emphasis is placed on the empowered and active individual.<sup>366</sup> This means that the process of gaining power is on the part of the individual by understanding the nature of one’s own needs and the cause and effects of political and social structures which prevent their realization.<sup>367</sup> For instance, in the framework of neo-liberal transformation of the economies and societies in the so-called industrialized countries, education is often reduced to the gaining of knowledge and competencies for the so-called ‘information and knowledge society’, whereas human rights education especially in its form of learning *for* human rights, puts the emphasis on social competencies, including solidarity and collective action for the fulfilment of the basic needs of the community.<sup>368</sup>

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<sup>360</sup> Deutsches Institut für Menschenrechte, Human Rights Education available at <https://www.institut-fuer-menschenrechte.de/en/human-rights-education/> (consulted on 28.07.2019).

<sup>361</sup> Alfredsson, 2001, p.273.

<sup>362</sup> Lohrenscheit, 2002, p.176.

<sup>363</sup> Lohrenscheit, 2002, p.176.

<sup>364</sup> Alfredsson, 2001, p.284.

<sup>365</sup> Alfredsson, 2001, p.284.

<sup>366</sup> Lohrenscheit, 2002, p.176.

<sup>367</sup> Lohrenscheit, 2002, p.176.

<sup>368</sup> Lohrenscheit, 2002, p.176.

Many international human rights law instruments establish the right to human rights education, whose provisions serve to encourage respect for human rights and fundamental freedoms, and they place the obligation on the state to provide it.<sup>369</sup> Hence, the states shall ensure that human rights education is provided at all levels of education, i.e. primary, secondary and higher education institutions, and it is incorporated in various subject matters such as history, social science as well as courses especially designed for this purpose.<sup>370</sup>

Knowing about human rights in order to exercise them is a precondition to enjoy the right to education itself. However, it is important to acknowledge that human rights education is a topic for itself and as such falls out of the scope of this dissertation, since the particular topic dealt with here is narrowed down specifically to the right to education as a human right.

## **2. International Legal Standards on the right to education**

When it comes to the right to education, the state plays a predominant role in all societies where the interest of community comes first compared to those of the individual.<sup>371</sup> Furthermore, it is always future-oriented or in other words connected to certain goals and concerns of a respective society.<sup>372</sup>

However, it was not before the modern era, i.e. the eighteenth century, when the right to education started being seen as a right of all and imposed a duty on state.<sup>373</sup> The preconditions to this were the emergence of a middle class, rationalist and individualist philosophy, and the nation state.<sup>374</sup> In that respect, Prussia was the first state to introduce compulsory education in 1763, followed by France in 1791. This right would go on to become reality in the following century at about the same time as when it was introduced in England and Wales.<sup>375</sup>

As a prerequisite for education to become compulsory and for all, a certain economic level needed to be reached. In other words, it presupposes the existence of necessary financial means and development of mechanization and productivity up to the point where child labour ceases to be essential in factories or on the land.<sup>376</sup> Meanwhile, as industrialization spread, the length of schooling increased.<sup>377</sup> Inequalities exist in capitalist and socialist states alike, though the degree to which these inequalities exist in either type of state varies.<sup>378</sup>

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<sup>369</sup> Alfredsson, 2001, p.282.

<sup>370</sup> Alfredsson, 2001, p.284.

<sup>371</sup> Le Thanh, 1979, p. 173.

<sup>372</sup> Woolley, 2012, p. 87.

<sup>373</sup> Le Thanh, 1979, p. 173.

<sup>374</sup> Le Thanh, 1979, p. 173.

<sup>375</sup> Le Thanh, 1979, p. 173.

<sup>376</sup> Le Thanh, 1979, p. 174.

<sup>377</sup> Le Thanh, 1979, p. 174.

<sup>378</sup> Le Thanh, 1979, p. 174.

As mentioned before, it was not until after World War II that the right to education was fully proclaimed at the international level, whereas the recognition of the global responsibility for education as a basic human right was acknowledged in the 1945 Constitution of UNESCO.<sup>379</sup>

The right to education is stipulated in a variety of international legal standards. These international instruments are of varying levels of legal force in the sense that they can be divided into two broad categories: those with binding force in international law such as conventions and treaties; and those lacking such a binding force such as recommendations and declarations.<sup>380</sup>

States Parties to conventions and treaties must meet international legal obligations to incorporate their provisions into their domestic legal order. Whereas, for those states who have adopted recommendations or made declarations, no such international legal obligation exists.<sup>381</sup> Recommendations and declarations have only moral force and carry political commitment, i.e. they represent *soft law*, which means State Parties are expected to take action by adopting follow up policies or by developing national legislation accordingly, but they cannot be held legally accountable for not so doing.<sup>382</sup>

The International Bill of Human Rights, which consists of the 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Civil and Political Rights (ICCPR) with its two Optional Protocols, and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) enshrine the right to education.

The right to education is contained in other UN human rights instruments, such as Articles 28-30 of the 1989 Convention on the Rights of the Child, and Article 10 of the Convention on the 1979 Elimination of All Forms of Discrimination against Women.

The core human rights instrument, i.e. *the 1948 Universal Declaration of Human Rights* sets forth moral foundations for the right to education in Article 26. Here it is stated that this right has to be *granted to everyone*. Education should be *free* at least in the elementary and fundamental stages, and *compulsory*. Moreover, Article 26 (2) sets forth that “technical and professional education shall be made generally available and higher education equally accessible to all on the basis of merit.”

However, the UDHR is not a legally binding document, so its provisions on education were first given binding legal force when they were largely translated into UNESCO's Convention against Discrimination in Education in 1960.<sup>383</sup> Article 7 of UNESCO's Convention obligates states to submit periodic reports to UNESCO's General Conference and provide information on the

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<sup>379</sup> Hodgson, 1996, p. 238.&239.

Weishart, 2016, p. 923.

<sup>380</sup> Singh, 2005, p. 103.

<sup>381</sup> Singh, 2005, p. 103.

<sup>382</sup> Singh, 2005, p. 103.

<sup>383</sup> Dickson & McCormick, 2016, p. 411.

See Article 5 of the 1960 UNESCO Convention against Discrimination in Education



legislative and administrative provisions they have adopted and other action(s) which they have taken to comply with the Convention.<sup>384</sup>

Further force to the right to education, such as equal access to education, was given by the two international covenants which were agreed upon in 1966, the *International Covenant on Civil and Political Rights* (ICCPR) and *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

In principle, the right of parents to freely determine "the religious and moral education of their children in conformity with their own convictions" is guaranteed in Article 18 of the 1966 UN Covenant on Civil and Political Rights as well as in Article 14 of the EU Charter of Fundamental Rights.<sup>385</sup>

Articles 13 and 14 of the **ICESCR** are devoted to the right to education. Article 13 has the longest provision in the Covenant, and is the most wide-ranging and comprehensive article on the right to education in international human rights law.<sup>386</sup> This legally binding international treaty is significant because it spells out the goals of education, i.e. it provides justification for the right to education.

The relevance of these two respective UN Covenants lies in the fact that both of them undertake to guarantee all the rights enunciated therein without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status.<sup>387</sup> In particular, Article 26 of the **ICCPR** guarantees general right to equality before the law, equal protection of the law, prohibition of discrimination and protection against discrimination by means of affirmative action. Consequently, any unreasonable distinction based on race, sex, social origin, or any other criteria previously mentioned relating to the law and practice of education (access to education, dismissal, tuition and fees, subsidies, contents and quality of education, etc.) would constitute a violation of Article 26 of the ICCPR and enable victims of such a violation to seek protection and file a complaint before the Human Rights Committee provided that the state concerned has ratified the First Optional Protocol to the Covenant.<sup>388</sup>

The most significant international and core human rights treaty on this matter remains the **1989 Convention on the Rights of the Child**, particularly Articles 28-30. Besides the language in the treaty itself, it also gains ethos because it is the most widely ratified international treaty to date with 196 signatories.<sup>389</sup> On the regional level two primary documents stand out. The Protocol of the

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<sup>384</sup> Dickson & McCormick, 2016, p. 411.

<sup>385</sup> Delbrück, 1992, p.97.

The 2000 EU Charter of Fundamental Rights, Article 14, para 3.

The 1952 Protocol 1 to the ECHR, Article 2.

<sup>386</sup> CESCR, General Comment No.13, 1999, para 2.

<sup>387</sup> Article 2 of the ICCPR and ICSECR.

<sup>388</sup> Dr. Nowak, 2001, p.258.

<sup>389</sup> UN Treaty Collection at [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en) (last consulted on 15.08.2019).

1950 European Convention for the Protection of Human Rights and Fundamental Freedoms Article 2 and the 2000 EU Charter of Fundamental Rights, as it sets forth the right to receive free compulsory education in Article 14 paragraph 2.

Even though the list of positive and legally binding guarantees of the right to education is impressive, the exact meaning and scope of this right remains debatable and dependable on political willingness of governments to comply with their international obligations.

In general, there are the two pillars of States' human rights obligations relating to education.<sup>390</sup> "The first obligation concerns enabling all children to benefit from primary education, enforcing access to school and school attendance by making primary education compulsory, and ensuring that primary education is free of charge."<sup>391</sup> The second obligation is shared among all human rights treaties and requires respect of parental freedom of choice, whereas the point of being free is not mentioned in the Protocol to the ECHR.

Hence, the international legal obligation to provide basic or fundamental education in elementary schools and in vocational or professional training in public institutions, although private schools are not ruled out, is placed on State authorities, which they undertook under the normative instruments adopted by the United Nations and UNESCO.<sup>392</sup> What has largely become of these obligations is that education is free and open for all.<sup>393</sup>

The State bears the responsibility to guarantee a public education system from birth to the end of a vocational or professional education, or, in other words, to the acquisition of a marketable qualification.<sup>394</sup> One can speak of a public education system if it allows access for everyone, and it is the state who is responsible for providing this.<sup>395</sup> On the other hand, nobody is forced to make use of these educational services. Hence even though mandatory schooling exists, there is no obligation to go to nursery schools or day care institutions.<sup>396</sup>

In addition, an education system should be organized in such a way that it meets the needs of children and youth. It must permit some form of their participation.<sup>397</sup> Students should have a way to participate in the design of the education system so as to best ensure their needs are being met. The organization of the educational system has to be open for change, because needs change over time. A key example of this is what happened when the large influx of refugees or asylum seekers arrived.

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<sup>390</sup> Special Rapporteur on the right to education, 1999, para 44.

<sup>391</sup> Special Rapporteur on the right to education, 1999, para 44.

<sup>392</sup> Delbrück, 1992, p.99.

Singh, 2005, p. 108.

Weishart, 2016, p.928.

<sup>393</sup> Delbrück, 1992, p.99.

<sup>394</sup> Richter, 2009, p. 8.

<sup>395</sup> Richter, 2009, p. 8.

<sup>396</sup> Richter, 2009, p. 8.

<sup>397</sup> Richter, 2009, p. 9.

Moreover, the obligations placed on a State include that the State has to provide the necessary financial resources for schools and other learning institutions. They must also supervise qualitative performance in public and private schools and institutions, which also enables the state to exercise active influence on the curricula.

Similarly, Article 26 of the UDHR entails a specific political goal: that the aim of the right to education is to further the activities of the United Nations and the maintenance of peace. Consequently, this leads to wide possibilities of State control over the education system in terms of its organizational structures, goals and the curricula.<sup>398</sup> Moreover, this perception of the right to education sheds light on it as a typical second generation (social) right, demanding the State to act, which is contrary to a right to protect the individual from State interferences.<sup>399</sup>

On the other hand, **Protocol No. 1 to the ECHR** phrases the right to education as a negative obligation, in the sense that it forbids a State to interfere with a child's right to education.<sup>400</sup> In particular, Article 2 of the Protocol to ECHR stipulates: "No person shall be denied the right to education."

To that reference, one can understand that the right to education exists not only as a social right but as a liberal (classical) human right at the same time, protecting individual freedom from infringements at the hands of State authorities, e.g. by one-sided curricula or ideological indoctrination of any kind.<sup>401</sup>

Concerning another relevant regional legal standard protecting the right to education, it is worth mentioning **the 1996 Revised European Social Charter (RESC)**, signed by the Member States of the Council of Europe. Article 7(3) of the RESC sets forth that the Contracting Parties undertake "to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education."

The 2007 Treaty of Lisbon made the **2000 European Charter of Fundamental Rights** a legally binding document, i.e. Member States are bound to apply it when they execute European law.<sup>402</sup> This regional document is relevant because it explicitly refers to the right to education in Article 14, though it should not be confused with the ECHR. The European Charter of Fundamental Rights was drafted by the European Union and interpreted by the Court of Justice, whereas the ECHR was drafted by the Council of Europe and interpreted by the ECtHR.<sup>403</sup>

Relevant here is the **1992 Council of Europe European Charter for Regional and Minority Languages**, which provides detailed guarantees for education in minority languages. In particular,

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<sup>398</sup> Delbrück, 1992, p. 101.

<sup>399</sup> Delbrück, 1992, p. 101.

<sup>400</sup> Delbrück, 1992, p. 101.

<sup>401</sup> Delbrück, 1992, p. 104.

<sup>402</sup> Richter, 2009, p. 5.

<sup>403</sup> Equality and Human Rights Commission, at <https://www.equalityhumanrights.com/en/what-are-human-rights/how-are-your-rights-protected/what-charter-fundamental-rights-european-union> (last consulted on 15.08.2019).

Article 8 refers to education. According to Article 8(1)(b) a State has to provide anyone who speaks a minority language (i) with a right to receive primary education in the relevant regional or minority languages; or (ii) to make available a substantial part of primary education in the relevant regional or minority languages; or (iii) to provide, within primary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or (iv) to apply one of the measures provided for under (i) to (iii) above at least to those pupils whose families so request and whose number is considered sufficient.

These regional legal instruments protecting the right to education are of tremendous importance, because monitoring bodies such as the European Court of Justice, the European Court of Human Rights, and the European Committee of Social Rights all safeguard the right. Namely, they have been called on to interpret the meaning and content of the right to education.<sup>404</sup> Moreover, they represent an official mechanism for the protection against human rights violations. In the event that an individual, companies or organizations feel an EU institution or respective state party has infringed their right, these mechanisms enable the offended party to lodge an application against the state or EU institution. This is also possible before the UN Human Rights Committee, the UN Committee on Elimination of Racial Discrimination, and the Committee on the Elimination of Discrimination against Women.<sup>405</sup>

One example of a mechanism at work was when the “availability of educational services for a specific group was at stake in a case before the European Committee of Social Rights under the Collective Complaints Procedure of the European Social Charter.”<sup>406</sup> In this instance, the complaint was lodged by an NGO, Autism-Europe, against France. It was argued that the implementation of relevant French law was contrary to Articles 15(1), 17(1) and E of the Revised Social Charter.<sup>407</sup> “The Committee held that, in France, the proportion of children with autism being educated in general or specialist schools was much lower than in the case of other children, whether disabled or otherwise. It also concluded that there was a chronic shortage of care and support facilities for adults with autism. Consequently, France had 'failed to achieve sufficient progress in advancing the provision of education for persons with autism'." This situation constituted a violation of Articles 15(1), 17(1) and E of the Revised Social Charter.”<sup>408</sup> What can be concluded from the Committee’s ruling is that that France failed to comply with its duty to implement the right to education.

Furthermore, “the European Court of Justice has incorporated a child rights perspective in its judgements. Most important for children on the move is the judgement from 2013 exempting unaccompanied children from the Dublin regulation, regarding the regulations on first asylum

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<sup>404</sup> Hodgson, 1996, p. 249.

<sup>405</sup> Dr. Dimitrijevic, 2003, p. 5.

<sup>406</sup> Coomans, 2009, p. 432.

<sup>407</sup> Coomans, 2009, p. 432.

<sup>408</sup> Coomans, 2009, p. 432.

country, stipulating that the state where the child is physically present is responsible for reviewing the asylum claim if no family member can be traced in another EU Member State.”<sup>409</sup>

Regarding the right to education itself, one understands under it the right to access the education as well as the right to receive it.<sup>410</sup> The latter rests on four features: availability, accessibility, acceptability, and adaptability.<sup>411</sup>

In that respect and within the jurisdiction of the State Party, *availability* refers to functioning educational institutions and programmes that have to be available in sufficient quantity; *accessibility* to educational institutions and programmes that have to be accessible to everyone, without discrimination; *acceptability* in that the form and substance of education, including curricula and teaching methods, have to be acceptable by being relevant, culturally appropriate and of good quality to students and, in appropriate cases, parents; and *adaptability* in that education that has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.<sup>412</sup> Eventually, both the individual and the society are its beneficiaries of the right to education.<sup>413</sup>

The principle of non-discrimination is crucial when it comes to the right to education, because it prohibits discrimination on any ground be it race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth.<sup>414</sup>

**The 1960 UNESCO Convention against Discrimination in Education** is a legally binding international document that lays down the obligation of States to ‘assure compliance by all with the obligation to attend school prescribed by law.’<sup>415</sup> To put things differently, it develops the fundamental principles of non-discrimination and equality of educational opportunities.<sup>416</sup>

Article 1 (2) of the UNESCO Convention against Discrimination in Education sets forth the term *education* to refer to all types and levels of education. It includes access to education, the standard and quality of education, and the conditions under which it is given. Therefore, the main objectives of this international legal document are to eliminate practices of depriving any person or group access to education, of limiting any person or group to education of an inferior standard, of establishing or maintaining separate educational systems that may inflict on any person or group conditions which are incompatible with human dignity.<sup>417</sup> However, it is important to note, that Article 2(a) of the same Convention permits the establishment or maintenance of separate educational systems for pupils of the two sexes “if these systems or institutions offer equivalent

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<sup>409</sup> ENOC, 2016, p. 28.

<sup>410</sup> Delbrück, 1992, p. 104.

<sup>411</sup> General Comment No. 13 para 6 to the ICESCR.

<sup>412</sup> General Comment No. 13 para 6 (a-d) to the ICESCR.

<sup>413</sup> Singh, 2005, p. 103.

<sup>414</sup> Singh, 2005, p. 105.

<sup>415</sup> Article 4 para. a of the 1960 UNESCO Convention against Discrimination in Education

<sup>416</sup> Singh, 2005, p. 104.

<sup>417</sup> Dr. Nowak, 2001, p.259.

access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study or for religious or linguistic reasons”; or Article 2(b) “for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.”

In addition, Article 4 (c) of the UNESCO Convention against Discrimination in Education sets forth an obligation upon States: “To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity.” Today, this particular clause is applicable to the position of ASMs, since it reminds the State to invest more effort into inclusion of minors who have missed their education due to various reasons; the state should integrate them into the education system.

Similar wording is found in Article 13(2) (d) of the 1966 ICESCR, which stipulates “fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education.”

The term *compulsory* primary education in Article 13 (2)(a) of the ICESCR highlights the fact that neither parents nor guardians nor the State are entitled to treat the decision as to whether the child should have access to primary education as an optional one.<sup>418</sup> Moreover, it grants every person an irrevocable entitlement to a period of education at public expense.<sup>419</sup> Consequently, this places the obligation on a state to enroll every student, including ASMs, into primary education facilities even if their parents forbid them to go to school themselves.<sup>420</sup>

The obligation to make education accessible to ASMs is found in Article 2 of the CRC and Article 3(e) of the UNESCO Convention against Discrimination in Education, which explicitly prohibit discrimination and extend the obligation to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status.<sup>421</sup>

The right to education has been recognized by other international legal standards, which seek to regulate specific topics of international concern, too.<sup>422</sup> Article 22 of the **1951 Convention relating to the Status of Refugee** and Article 22 of the **1954 Convention relating to the Status of Stateless Persons** respectively provide that the State Parties shall secure to refugees and stateless persons “the same treatment as is accorded to nationals with respect to elementary education” and, in

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<sup>418</sup> General Comment No. 11 para 6 to the ICESCR.

<sup>419</sup> Hodgson, 1996, p. 241.

<sup>420</sup> Hodgson, 1996, p. 241.

<sup>421</sup> General Comment No. 13 para 34 to the ICESCR.

<sup>422</sup> Hodgson, 1996, p. 245.

respect of all other types and levels of education, “treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances”.<sup>423</sup>

In addition, Article 5(e)(v) of the **1965 International Convention on the Elimination of All Forms of Racial Discrimination** (ICEAFRD) obliges States Parties to “undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone... to equality before the law, notably in the enjoyment of... the right to education and training”.<sup>424</sup> This obligation is further reinforced in Article 7 of the ICEAFRD, in particular by obliging State Parties “to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination”.

The right to education, like all human rights, imposes the obligation on a State to respect, protect and fulfill. *The obligation to fulfill* incorporates both an obligation to facilitate and an obligation to provide; *the obligation to respect* requires State parties to avoid measures that hinder or prevent the enjoyment of the right to education; and *the obligation to protect* requires State parties to take measures that prevent third parties from interfering with the enjoyment of the right to education.<sup>425</sup>

But what do international state obligations mean for an individual? “Once a convention has been ratified, accepted or acceded to in sufficient numbers (as stipulated by the convention itself) to enable it to enter into force, it ultimately, after some possible delay, becomes binding on the State that has performed such a formality; and once incorporation procedures have been completed, it can be brought into force within that State’s internal order.”<sup>426</sup>

“When the right established for the individual benefit forms part of a convention that is properly ratified and incorporated into a State’s internal order, thereby rendering it legally binding on that State, he or she can use every available legal means to secure compliance: recourse to law courts, for instance, where the judge ultimately has the power to examine whether there is a breach of the State’s legal obligations, and to come to a decision. Technically speaking, of course, individuals do not necessarily have to take such action themselves: groups enjoying legal status and with a stake in the matter (unions, public service users or parents’ associations, etc.) may take such action on behalf of their members. Furthermore, general international law, irrespective of whatever specific mechanisms any particular instrument may have additionally established to ensure compliance, provides similar means of sanctioning the right to education internationally within the realm of inter-State relations. If, for instance, individuals living abroad find themselves to be the victims of discriminatory measures in their State of residence that prevent them from exercising their right to education as laid down in a legally binding instrument (e.g. the Convention against Discrimination in Education of 14 December 1960), and failing domestic remedies, their State of origin will be free to exercise diplomatic protection on their behalf with a view to ensuring that the

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<sup>423</sup> Hodgson, 1996, p. 245.

<sup>424</sup> Hodgson, 1996, p. 245.

<sup>425</sup> Singh, 2005, p. 108.

<sup>426</sup> Singh, 2005, p. 109.

State of residence meets its commitments. Hence, and, in a sense, indirectly, one State can be compelled to meet its treaty obligations by another.”<sup>427</sup>

Furthermore, there is an obligation placed on states to report to international bodies, such as committees on particular topics. For instance, State Parties to the ICESCR have to submit a report every five years. These reports are considered during a public session to the Committee on Economic, Social and Cultural Rights.<sup>428</sup> Within UNECSO the time and manner of the reporting system is determined by the General Conference which reports on laws, regulations and statistics relating to its educational, scientific and cultural institutions and activities.<sup>429</sup> Additionally, reports about any action(s) taken upon the Committee’s recommendations and conventions are to be submitted by the state.<sup>430</sup>

“In order to ensure smooth operation of this procedure, UNESCO has set up subsidiary bodies responsible for examining the reports of Member States. Such is the role of the Committee on Conventions and Recommendations (CR) for the reports that are specifically entrusted to it by UNESCO’s Executive Board.”<sup>431</sup>

What follows after reports have been submitted is a *constructive dialogue* between the Committee and the state. For example, the CESCR will hold this *constructive dialogue* with a state with a view to helping the State better implement its legally binding obligations under the Covenant.<sup>432</sup> Afterwards, it adopts ‘Concluding Observations’ about the State, which acknowledge the obstacles the State is encountering and identifies the CESCR’s particular concerns such as low levels of literacy or discrepancies between primary school enrolment rates for girls and boys, and it finally ends with recommendations and suggestions.<sup>433</sup>

Furthermore, cooperation between international organizations such as UNESCO, the United Nations Development Programme, UNICEF, ILO, the World Bank, the International Monetary Fund and other relevant bodies within the United Nations, the European Union, or the Council of Europe enhances the protection of the right to education through the process of monitoring, evaluation and political pressure. For instance, World Bank and IMF, could pay greater attention to the protection of the right to education in their lending policies or credit agreements.<sup>434</sup> Similarly, in the case of a violation of the right to education of ASMs in Serbia, the EU could place additional pressure on Serbia during the integration process in order to achieve full application of granted rights.

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<sup>427</sup> Singh, 2005, p. 109.

<sup>428</sup> Singh, 2005, p. 109.

<sup>429</sup> Singh, 2005, p. 109.

<sup>430</sup> Singh, 2005, p. 109.

<sup>431</sup> Singh, 2005, p. 114.

<sup>432</sup> Singh, 2005, p. 115.

<sup>433</sup> Singh, 2005, p. 115.

<sup>434</sup> General Comment No. 13 para 13 to the ICESCR.



### 3. Defining asylum-seeking minors

The term refugee is defined in the 1951 Convention relating to the Status of Refugees (the Refugee Convention), Article 1 A (2), as a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

On the other hand, an asylum-seeker is someone who says he or she is a refugee, but whose claim has not yet been definitively evaluated.<sup>435</sup> Notwithstanding awaiting a formal determination of their status, the asylum-seeker is still entitled to the protection of international refugee law.<sup>436</sup> The right to seek asylum is a basic human right, and it has a stronghold in the core human rights treaty, Article 14 of the 1948 Declaration of Human Rights (UDHR).

For analytical purposes, children in the context of international migration are often divided into various categories such as asylum-seekers, children left behind, unaccompanied / accompanied, trafficked, smuggled, regular / irregular, returned, etc.<sup>437</sup> Even though there are specific legal and protection mechanisms available to these various categories of children affected by migration, of crucial importance is that states take a comprehensive approach that recognizes the rights of all children in the context of migration. This underpins the core principle of non-discrimination.

For the purpose of this dissertation, a “minor” is every human being below the age of eighteen years as defined by Article 1 of the UN Convention on the Right of the Child. Hence all categories of afore- mentioned minors who seek refuge in countries out of their origin fall within the scope of this dissertation. This distinction is important due to the complexity of migration dynamics.

These categories are fluid and temporary, and children affected by migration may transit between various categories within the course of their childhood, e.g. asylum-seeking and trafficked children are not always recognized as such, and children who are undocumented at a given point in time may access regular status at a later stage.<sup>438</sup>

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<sup>435</sup> UNHCR (d), available at <http://www.unhcr.org/pages/49c3646c137.html> (last consulted on 02.01.2016).

Refugee Council, available at

[http://www.refugeecouncil.org.uk/policy\\_research/the\\_truth\\_about\\_asylum/the\\_facts\\_about\\_asylum](http://www.refugeecouncil.org.uk/policy_research/the_truth_about_asylum/the_facts_about_asylum) (last consulted on 02.01.2016).

<sup>436</sup> Amnesty International, 2004, p. 3.

<sup>437</sup> UNICEF (c), 2012, p. 3.

<sup>438</sup> UNICEF (c), 2012, p. 3.

### 3.1.Special protection of asylum-seeking minors under international law

The Refugee Convention still remains the most important legally binding global instrument that provides specific protection for refugees.<sup>439</sup> It sets forth standards for the treatment of refugees. The most fundamental standard is the principle of non-refoulement, i.e. prohibition of expulsion or return. Hence, “no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.<sup>440</sup>

The non-refoulement principle is strengthened in the Article 3 of the 1950 European Convention on Human Rights (the ECHR) since the European Court of Human Rights has the competence to render binding judgments concerning the conduct of contracting states under the ECHR. Therefore, contracting states shall not return anyone if he/she would, as a result of their return, face torture or inhuman or degrading treatment or punishment.

Furthermore, the Refugee Convention does not set any age limits, meaning it applies to all refugees irrespective of their age.<sup>441</sup> However, this Convention is considered inadequate in meeting the protective needs of child refugees due to the dominant interpretations of the Convention's refugee definition, which is considered to reflect an adult male norm.<sup>442</sup> Therefore, it is no longer possible to interpret or apply the Refugee Convention without drawing on the text and jurisprudence of other human rights treaties.<sup>443</sup>

That being said, the 1989 Convention on the Rights of the Child (the CRC) is a human rights treaty setting forth the civil, political, economic, social, health and cultural rights of children. With its two Optional Protocols on involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, the CRC is considered the most important international legal instrument defining the protection of children's rights, including asylum seeking minor's rights. Significance of this convention lies in the fact that almost all Member States of United Nations have ratified it, with the exception of the United States.<sup>444</sup> However, the USA has signed the CRC, which means that it has undertaken a commitment to refrain from acts that would defeat the object and purpose of the treaty.

Governments of countries that have ratified the CRC are required to report to and appear before the United Nations Committee on the Rights of the Child periodically to be examined on their

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<sup>439</sup> Nykänen, E., 2001, p.316.

Feller, Erika, 2003, p.6.

<sup>440</sup> Article 33 of the Refugee Convention.

<sup>441</sup> Nykänen, E., 2001,p.316.

<sup>442</sup> Nykänen, E., 2001, p.316.

Roberts, Andrea, 2002, p.163.

Happold, Matthew, 2002, p.1131.

<sup>443</sup> Clark, Tom, 1999, p.389.

Wendy A. Young, 2002, p.38.

<sup>444</sup> United Nations Treaty Collection, at [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en), (consulted on 6.01.2015)

progress with regards to the advancement of the implementation of the Convention, its Optional Protocols, and the status of child rights in their country.<sup>445</sup> Apart from that, the Committee issues General Comments regarding provisions of the CRC, which represents a very useful tool to State Members when ensuring that asylum-seeking minors are able to access and enjoy their rights, and are provided proper protection, care and treatment.

The CRC sets forth a legal framework for addressing the concerns of children, including refugee children. There are three fundamental principles of interpretation set forth in the CRC. They are the principle of the evolving capacities of the child (Article 5 of the CRC), the principle of the best interest of the child (Article 3 of the CRC) and the child's right to be heard (Article 12 of the CRC). These principles of interpretation apply to all considerations involving children, therefore including refugee status determination.<sup>446</sup>

Furthermore, Article 22 of the CRC is of particular relevance for refugee children and children seeking asylum. It sets forth that "States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties."

In addition, Optional Protocols to the CRC on involvement of children in armed conflict and on the sale of children, child prostitution and child pornography are of great value when it comes to the protection of asylum-seeking minors' rights. They expand protection from sexual violence and exploitation as well as from use of children in hostilities.

On the other hand, when it comes to the ECHR and the protection of the rights of asylum-seeking minors, this Convention appears to be a very powerful tool, since there is a monitoring body reflected in the European Court of Human Rights (ECtHR) which legally obliges State Members to respect and protect the rights and freedoms enshrined in the ECHR. However, the ECtHR tends to leave member states a wide margin of appreciation in issues related to migration. Similarly, it leaves an extensive margin of appreciation for states in defining who children are, how they should be treated, and when they should be protected.<sup>447</sup>

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<sup>445</sup> Joksic, Tijana, 2015, p.50.

<sup>446</sup> Nykänen, E. 2001, p. 320.

Gordon, Christine M., 2005, p.647.

Alsaud, Fahdah Fahd, 2015, p.229.

<sup>447</sup> Nykänen, E, 2001, p.328.

### 3.2.Children's vulnerability in the refugee context

Unfortunately, asylum seeking minors are systematically denied rights due to national and global inequalities.<sup>448</sup> Hence, when analyzing the position of refugees, children are regarded as an especially disadvantaged and neglected group.

Lack of adulthood or age-related immaturity and inexperience put them in jeopardy of military and sexual exploitation, trafficking, forced labour, forced marriages etc. Furthermore, due to lack of education, language barriers, memory loss and inability to express themselves properly, their claim for asylum might be declined. Hence, they should be appointed a legal guardian, who can provide advice in a child-friendly manner and in language they understand.<sup>449</sup> They should also not be refused entry into the territory, and their lodged asylum applications should be handled expeditiously.

Namely, children's vulnerability derives from their dependence on adults.<sup>450</sup> Due to physical and psychological differences between adults and children, children are dependent on adults for care and protection. Furthermore, from the perspective of age and gender, it is claimed that when women and children apply for refugee status independently, they are more likely to be denied refugee status as compared to men.<sup>451</sup>

In addition to age and gender vulnerability, and persecution based on the same, age and gender are considered indispensable. For instance, when it comes to the harmful practice of female genital mutilation, a girl is persecuted based on her sex and her age. Another example comes in the form of forced military recruitment, which may target boys based on both, similarly to the girls in the aforementioned example, their sex and age.<sup>452</sup>

Furthermore, a narrowed interpretation of the definition of a refugee goes hand in hand with states' reluctance to apply it to woman and children, as they fear this may trigger a massive influx of refugees. Hence, children's vulnerability to exclusion is reflected in three central factors:

1. **The normative factor:** the adult male paradigm governing international refugee law as well as the absence of gender or age as specified grounds of persecution in the 1951 Convention on the Status of Refugees. In addition, gender-specific or child-specific persecution has traditionally been excluded from the interpretation of persecution, resulting

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<sup>448</sup> Cemlyn, S. and Briskman, L, 2003, p. 167.

<sup>449</sup> Edwards, Alice, 2003, p.78.

Landgren, K., 2007, p.12.

O'Sullivan, Maria, 2013, p. 228.

<sup>450</sup> Ullah, A., 2015, p.10.

<sup>451</sup> Bhabha, J., 2004, p.227.

Cemlyn, S. and Briskman, L, 2003, p. 172.

<sup>452</sup> Edwards, Alice, 2003, p.57.

in a marginalization of these behaviors from the protective scope of the Refugee Convention.<sup>453</sup>

**2. Institutional ideology factor:** “those responsible for the practical administration of asylum adjudication, members of both the executive and the judiciary, exclude women and child asylum applicants because they tend to operate with an age and gender-defined lens, a restrictive, traditional male-centered notion of persecution which deems non prototypical asylum applicants apolitical, passive victims whose risk of harm occurs within the private sphere, and who are unlikely targets of persecution.”<sup>454</sup>

**3. The procedural factor:** it is reflected in the states’ practice and in their discriminatory stance by adopting asylum procedures that do not consider gender or age-based specificities.<sup>455</sup>

In addition, the lack of an adequate administrative mechanism for registering, documenting and determining protection needs for asylum-seeking minors increases their vulnerability.<sup>456</sup> Unregistered asylum seeking minors can be denied assistance, their particular needs may not be addressed, newly born children may remain without a birth certificate (which further implies the issue of statelessness), they might not be admitted to schools, and tracing family members cannot be properly undertaken.

The reality today suggests, if given similar risks of persecution, a smaller percentage of women and children compared to similarly placed men make asylum applications. Consequently, this represents a prima facie indication of disadvantage and it is consistent with the claim that women and children have a harder time getting asylum.<sup>457</sup>

On the other hand, statistical evidence of the demographic characteristics of refugees indicate that in developing countries of asylum that neighbor the refugees’ country of origin, women and children refugees substantially outnumber adult males.<sup>458</sup> By contrast, in developed countries, it is male asylum seekers who by far outnumber females. Age breakdowns remain generally unavailable.<sup>459</sup>

Research data have also revealed that many asylum-seeking minors experience trauma, stress and anxiety disorder, accompanied with social adjustment difficulties related to cultural, language and socio-economic factors.<sup>460</sup> In addition, other commonly reported problems include social

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<sup>453</sup> Bhabha, J., 2004, p. 228.

<sup>454</sup> Bhabha, J., 2004, p. 228.

<sup>455</sup> Bhabha, J., 2004, p. 228.

<sup>456</sup> Kelley, Ninette, 2007, p.407.

<sup>457</sup> Bhabha, J., 2004, p. 232.

<sup>458</sup> Bhabha, J., 2004, p. 232.

<sup>459</sup> Bhabha, J., 2004, p. 232.

<sup>460</sup> Elliott V., 2007, p.132.

withdrawal, somatic complaints, sleep problems, peer relationship difficulties, and attention problems.<sup>461</sup>

Hence, while there is the risk of asylum-seeking minors experiencing some kind of primary trauma caused by war and displacement from the country of origin, there is often a secondary trauma causing distress.<sup>462</sup>

A picture of a four-year-old Syrian girl, who surrendered to a photographer when she mistook the man's camera for a gun, tore out hearts of many. The picture was taken at the Atmen Refugee Camp in December 2014, and it showed the young girl frozen in fear with her arms raised and her lips tightly pursed.<sup>463</sup> The image speaks for itself and is an example how distressed, shocked, tired, hungry, wounded and uncertain about what to do these children are.

Vulnerability of minor asylum seekers is deepened by the fact that governments and the media continue to portray people on the move as a problem and even as 'terrorists' rather than people fleeing human rights abuses or seeking economic security and stability for their families. One famous French satirical magazine depicted a young Syrian refugee who drowned as an adult committing sexual assault in Germany. The cartoon refers to the attacks that took place in 2015-16 in Cologne on New Year's Eve. However, it could reasonably be argued that, rather than this cartoon being an exercise of free speech, it qualifies as hate speech because it heightens existing tensions over open policies towards migrants and refugees, and it undermines human dignity.

Bearing in mind the afore-mentioned, the principle of the best interest of the child (Art. 3 of the CRC) is crucially relevant in determining whether or not a child should be granted international protection.<sup>464</sup> This principle always applies, irrespective of they are unaccompanied or accompanied minors, or if they are seeking family reunion. Moreover, aligned with the principle of family unity (Art. 9 of the CRC), the best interest of the child principle is relevant in removal cases, or in other words when a state seeks to deport a parent.

In order to determine the child's best interest, the Committee on the Rights of the Child stresses that it is important to clearly and comprehensively assess a child's identity, including his or her nationality, upbringing, ethnic, cultural, and linguistic background, particular vulnerabilities and protection needs.<sup>465</sup>

Furthermore, the Committee on the CRC has stressed that all decisions on measures and actions concerning a specific child or a group of children must respect the best interests of the child or children, with regard to education.<sup>466</sup> Schools are regarded as a major source of safety, recovery

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<sup>461</sup> Elliott V., 2007, p.133.

<sup>462</sup> Elliott V., 2007, p.134.

<sup>463</sup> Ullah, A., 2015, p.10.

<sup>464</sup> McAdam, 2006, p. 251.

<sup>465</sup> Committee on the CRC, Comment 6, 2005, para 20.

<sup>466</sup> Committee on the CRC, GC no. 6, 2005, para 79.

and integration for asylum seeking minors.<sup>467</sup> In addition, schools serve as the base for some community campaigns against deportation, which can be crucial to the progress of asylum seekers' claims.<sup>468</sup>

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<sup>467</sup> Cemlyn, S. and Briskman, L, 2003, p. 165.

<sup>468</sup> Cemlyn, S. and Briskman, L, 2003, p. 165.

## Chapter II

In this Chapter, I analyze CEAS and its compliance with international refugee and human rights law in order to determine whether or not there is really a place for calling the EU ‘fortress Europe’ and how this could be remedied. Following, I analyze the effect it had on the Serbian domestic asylum system.

### 1. Common European Asylum System

Asylum is a fundamental right. In other words, granting it is an international obligation under the 1951 Geneva Refugee Convention.<sup>469</sup> Every person has the right to seek asylum. The grounds by which they are applying will differ and affect the status that they are eventually granted. Not every asylum seeker will be recognized as a refugee, though it should be remembered that every refugee is, initially, considered an asylum seeker.<sup>470</sup>

Since the EU is an area of open borders and freedom of movement, it has to have a joint approach to asylum across the EU. Therefore, the EU has been working on the creation of the Common European Asylum System (hereinafter CEAS) since 1999. CEAS is intended to ensure that the rights of refugees under international law are protected in its member states.<sup>471</sup>

The CEAS sets out minimum standards and procedures for processing and assessing asylum applications and applies to the treatment of both asylum seekers and those who are granted refugee status.<sup>472</sup> However, implementation is uneven throughout many EU states. The so-called ‘Dublin system’ allocates the responsible member state for considering the application for asylum. In practice this means that if an asylum seeker has crossed several EU Member States on their journey, the CEAS allows one EU country to send that asylum seeker to the first reached EU country so long as that country upholds the rights of asylum seekers.<sup>473</sup> This creates a heavy load for Member States on the EU’s external borders and puts countries in the north in a privileged position even though they are the desired destination for many refugees.

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<sup>469</sup> European Commission (a), 2014, p.3.

Article 18 of the Charter of Fundamental Rights of the European Union.

<sup>470</sup> Article 14 of the Universal Declaration of Human Rights.

Open Society Foundation, at <https://www.opensocietyfoundations.org/explainers/understanding-migration-and-asylum-european-union> (last consulted on 13.02.2016).

<sup>471</sup> Open Society Foundation, at <https://www.opensocietyfoundations.org/explainers/understanding-migration-and-asylum-european-union> (last consulted on 13.02.2016).

European Commission (a), p.3.

<sup>472</sup> Ibid.

<sup>473</sup> Ibid.



Only a very small proportion of asylum seekers are transferred this way, since failures of asylum systems in Greece, Italy, and Hungary have led courts to block transfers.<sup>474</sup> Furthermore, regarding the movement of asylum seekers, unlike settled residents and tourists, they do not have the right to move freely within the EU's Schengen area.<sup>475</sup> The objective of this is to eliminate secondary movement or so called 'asylum shopping.'<sup>476</sup>

Additionally, 2015 saw several EU member states reinstitute border controls due to the large increase in the number of migrants. This has endangered the Schengen system of free movement. Fences have been built at increased speeds along borders, notably in Hungary, Bulgaria, and Slovenia, and in March 2016 the Balkan route was closed. Additionally, the rise of the far-right anti-immigrant parties was notable in popularity across Europe.

Stricter carrier restrictions, visa requirements and other border control measures have all led to asylum seekers increasingly engaging in irregular, unsafe journeys, often using the services of smugglers. Until the 1990s the number of reported deaths was sporadic. That number reached its peak in 2016 when the number of reported deaths/missing persons was 5,096 with 373,652 arrivals via the Mediterranean route.<sup>477</sup> At the beginning of this PhD project in 2015, there were 1,015,078 arrivals by sea and 3,771 reported deaths and/or missing persons.<sup>478</sup> In 2018, there were 141,500 arrivals via the Mediterranean route, and 2,277 reported deaths and missing persons.<sup>479</sup> Finally, by August 2019, there were 40,624 registered arrivals and 839 deaths/missing persons.<sup>480</sup> Children make 20 per cent of the total number in arrivals via sea.

## 2. The CEAS Establishment

The EU was created by the Treaty on European Union (the 1992 Treaty of Maastricht), and it required from its Member States that their policy on asylum be in compliance with the European Convention for the Protection of Human Rights and the Refugee Convention.<sup>481</sup> The 1999 Treaty of Amsterdam attempted to resolve incoherent European asylum law resulting from disparate national policies by placing asylum directly under the jurisdiction of EU law, thus removing it from the Third Pillar and placing it in the First Pillar.<sup>482</sup> This requirement deserves particular attention, because in the event that Serbia eventually becomes an EU Member State, it will have to apply CEAS directly.

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<sup>474</sup> Open Society Foundation, at <https://www.opensocietyfoundations.org/explainers/understanding-migration-and-asylum-european-union> (last consulted on 13.02.2016).

<sup>475</sup> Ibid.

<sup>476</sup> Gallagher, 2002, p. 378.

<sup>477</sup> UNHCR (1a), at <http://data.unhcr.org/mediterranean/regional.php> (last consulted on 15.08.2019)

Guild Elspeth, 2015, p. i.

<sup>478</sup> UNHCR (1a), at <http://data.unhcr.org/mediterranean/regional.php> (last consulted on 15.08.2019)

<sup>479</sup> Ibid.

<sup>480</sup> Ibid.

<sup>481</sup> Allard, 2010, p.303.

<sup>482</sup> Allard, 2010, p.304.

Therefore, the CEAS forms a fundamental part of the EU's Area of Freedom Security and Justice (AFSJ) which was established in 1999, whereas the notion of the CEAS was born in the Tampere meeting and the Hague Programme.<sup>483</sup> So far it has undergone two phases of legislation; one in 2005 and the other in 2013. It remains yet to be seen how the process of further harmonization will develop. The aim of the second phase was to establish a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection.<sup>484</sup>

Nevertheless, with the entry into force of the 1999 Amsterdam Treaty, which was inserted into the Treaty establishing the European Community (hereinafter TEC), the European Union embarked on an ambitious and challenging programme of legislative harmonization in the complex and sensitive area of asylum and refugee protection.<sup>485</sup> The main objectives of the legal harmonization as established by Title IV of the TEC was to achieve minimum common standards concerning various segments of asylum law besides the adoption of unified rules on the allocation of asylum applications amongst Member States. The creation of the CEAS in two phases was envisaged, based on a full and inclusive application of the 1951 Geneva Convention, thus ensuring that nobody be sent back to persecution, i.e. maintaining the principle of nonrefoulement.<sup>486</sup>

In addition, under Article 6(2) of the EU Treaty, the Union must also respect fundamental rights, as guaranteed by the 1950 European Convention on Human Rights, as well as the Charter of Fundamental Rights approved by EU heads of state and government in 2000. These create clear commitments to fundamental principles essential to the protection of refugees and asylum seekers, confirming that the right to asylum and the principle of non-refoulement form part of the general principles of EC law.<sup>487</sup> The Court of Justice is expected to play a major role in ensuring the effective and uniform application of the CEAS and in filling the gap with international refugee law.<sup>488</sup>

On the other hand, the European Court of Human Rights (ECtHR) reminds us on a daily basis that the safe third country and safe country of origin concepts, which are foreseen by the CEAS, are irreconcilable with ECtHR case law and inconsistent with international refugee law.<sup>489</sup> Hence, the new proposal allows both case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe. The ECtHR has stressed that it is important that asylum seekers have the possibility to challenge the application of

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<sup>483</sup> Guild Elspeth, 2015, p.1.

Campagna, 2010, p. 144.

<sup>484</sup> European Council, 2005, p. 3.

Dr Nebojsa Raicevic, 2015, p. 16.

<sup>485</sup> Garlick, 2006, p. 45.

Dr. Lambert, 2009, p.522

<sup>486</sup> Júlia Mink, 2012, p. 119.

<sup>487</sup> Nicholson, 2006, p.514.

<sup>488</sup> Zarevac, 2010, p.56.

<sup>489</sup> Ippolito, 2013, p. 279.

the safe third country concept on the grounds that the third country is not safe in his/her particular circumstances.<sup>490</sup>

All in all, the notion of the CEAS consists of the Qualification Directive, the Procedures Directive, the Reception Standards Directive, the Dublin Regulation III –Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in one of the Member States by a Third-Country National, and Regulation Concerning the Establishment of 'Eurodac' for the Comparison of Fingerprints for the Effective Application of the Dublin Regulation III.<sup>491</sup> Therefore, while these measures are included in the CEAS, the Temporary Protection Directive refers to the concept where it speaks of 'common European arrangements on asylum'.<sup>492</sup> The Dublin Convention and the Family Reunification Directive do not refer to the CEAS, hence they are not 'parts' of this system.<sup>493</sup>

### 3. Dublin System

The 1990 Dublin Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (hereinafter Dublin Convention), defined criteria for determining the State responsible for examining asylum claims presented in an EU Member State.<sup>494</sup> The 2003 Council Regulation, the so called Dublin II Regulation, established the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national, as well.<sup>495</sup> It continued to allocate responsibility for assessing the asylum claim to the Member State responsible for the applicant's entrance to EU territory. The rationale thus continued to be penalization of the State through which the asylum seeker first gained entry to the Union.<sup>496</sup>

Even though the revised 2013 Dublin Regulation III (i.e. Regulation EU No 604/2013) continues to allocate the responsibility to the first entry state, it allows Member States to disregard this clause. They can decide on the claim if the return to first entry country would represent the risk of facing degrading and inhuman treatment.<sup>497</sup>

On the other hand, the Schengen Agreement has opened the door for an uncontrollable flow of migrants, and, with that uncontrollable flow, the possibility to lodge an asylum claim in several Member States arises. Hence, the 1985 Convention implementing the Schengen Agreement

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<sup>490</sup> Ippolito, 2013, p. 279

<sup>491</sup> Hemme Battjes, 2006, p. 195.

Dr. Lambert, 2009, p.522.

Bendel, 2014, p. 2

Aida, 2014/2015, p.66.

<sup>492</sup> Hemme Battjes, 2006, p. 195.

<sup>493</sup> Hemme Battjes, 2006, p. 195

<sup>494</sup> Nicholson, 2006, p. 507.

<sup>495</sup> Nicholson, 2006, p. 507.

<sup>496</sup> Nicholson, 2006, p. 507.

<sup>497</sup> Dr Nebojsa Raicevic, 2015, p.20.

foresees that regardless of the Contracting Party with which an alien lodges an application for asylum, only one Contracting Party can be responsible for processing that application.<sup>498</sup>

Protection granted by the Refugee Convention is, today, endangered. This is because the Dublin Convention essentially limits responsibility for the processing of a given application, no matter where it was lodged, to just one of the EU Member States. This allows that member state a wide amount of discretion when determining whether that application is admissible or not. If it is inadmissible, the ruling for that one application is relevant for all of Europe, meaning the applicant cannot apply elsewhere.<sup>499</sup>

However, every Contracting Party retains the right, for special reasons particularly connected to national law, to process an application for asylum even if, under this Convention, the responsibility for so doing lies with another Contracting Party.<sup>500</sup> In particular, this is supported by the decision of the ECtHR in the *M.S.S. v Belgium and Greece*, which shows that transfers under the Dublin II Regulation can lead to breaches of the principle of non-refoulement.<sup>501</sup> It also recognizes that EU Member States generally considered to be safe countries, may, in reality, not be. Thus, each and every Member State retains its responsibility under international law for any possible breaches of the principle of non-refoulement in consequence of the ‘Dublin transfers’.<sup>502</sup>

On the other hand, the EU adopted Regulation on the establishment of ‘Eurodac’ in order to facilitate better implementation of Dublin Regulation III, that is, the system of jurisdiction established thereof. Namely, the Eurodac Regulation (Regulation EU No 603/2013) lays down an obligation on the Member States to promptly take and transmit the fingerprint data of every applicant for international protection and of every third-country national or stateless person who is apprehended in connection with the irregular crossing of an external border of a Member State, if they are at least 14 years of age (Article 17).

The practice of taking fingerprints is justified with the argument that fingerprints constitute an important element in establishing the exact identity of persons (Regulation EU No 603/2013, Article 5). Authorities responsible for internal security have access to Eurodac in well-defined cases, when there is a substantiated suspicion that the perpetrator of a terrorist or other serious criminal offence has applied for international protection (Regulation EU No 603/2013, Article 10),

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<sup>498</sup> Convention implementing the Schengen Agreement, Article 29 para 3.

<sup>499</sup> Campagna, 2010, p.144.

<sup>500</sup> Convention implementing the Schengen Agreement, Article 29 para 4.

<sup>501</sup> Mink, 2012, p. 122.

ECtHR, the *M.S.S. v Belgium and Greece*, para 359, 360, and 365.

Regulation EU No 604/2013, Article 32.

FRA, 2016, p. 107.

<sup>502</sup> Mink, 2012, p. 122.

ECtHR, the *M.S.S. v Belgium and Greece*, para 359, 360, and 365.

Regulation EU No 604/2013, Article 32.

FRA, 2016, p. 107.

and eventually comparison of fingerprints is necessary for the effective application of the Dublin Regulation III (Regulation EU No 603/2013 , Article 1).

### 3.1.The 2013 Recast Reception Standards Directive

In order to ensure a dignified standard of living, member states endeavored to harmonize conditions in which asylum seekers would be received. The goal was to limit secondary movement of asylum seekers, who, otherwise, continue to move within the EU.<sup>503</sup> Therefore, the 2013 Recast Reception Standards Directive (Directive 2013/33/EU) lays down standards for the reception of applicants that will suffice to ensure them a dignified standard of living and comparable living conditions in all Member States.<sup>504</sup>

The 2013 Recast Reception Standards Directive places an obligation on Member States to provide information within a reasonable time not exceeding 15 days after they have lodged their application for international protection.<sup>505</sup> This information is for asylum applicants and should include all necessary details about: their rights and obligations relating to reception; sources of legal advice, health care, and employment; and they must provide applicants with a document certifying their asylum seeker status.<sup>506</sup> They must also provide confirmation of their lawful permission to stay while the application is pending.<sup>507</sup>

Member States shall ensure that, within three days of the lodging of an application for international protection, the applicant is provided with a document issued in his or her own name certifying his or her status as an applicant or testifying that he or she is allowed to stay on the territory of the Member State while his or her application is pending or being examined (Article 6).

Furthermore, the Directive foresees that detention should be a measure of last resort and may only be applied after all non- custodial alternative measures to detention have been duly examined (Article 20). In the case of children, who are always perceived as vulnerable, the 2013 Recast Reception Directive fails to strictly and duly consider their vulnerability when it allows for the detention of unaccompanied asylum-seeking children 'in exceptional circumstances'.<sup>508</sup>

Article 2 (f) of the Recast Reception Standards Directive sets forth 'reception conditions' as the full set of measures that Member States grant to applicants. Article 2(g) lays down 'material

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<sup>503</sup> Article 12 of the Directive 2013/33/EU.

Garlick, 2006, p. 50.

<sup>504</sup> Article 11 of the Directive 2013/33/EU.

<sup>505</sup> Garlick, 2006, p. 50.

<sup>506</sup> Garlick, 2006, p. 50.

<sup>507</sup> Garlick, 2006, p. 50.

<sup>508</sup> Ippolito, 2013, p. 278.

Article 11 (3) of the Directive 2013/33/EU.

Garlick, 2006, p. 50.

reception conditions' as the reception conditions that include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance.

Importantly, the 2013 Recast Reception Standards Directive in Article 3 (1) sets out to whom it applies. More specifically, it applies to all third-country nationals and stateless persons and their family members, who apply for international protection on the territory, including at the border, in the territorial waters or in the transit zones of a Member State, as long as they are allowed to remain on the territory as applicants, or in a capacity of family members, if they are covered by such application for international protection according to national law.

However, some broad exceptions and limits upon these provisions in the Recast Reception Conditions Directive threaten to reduce or withdraw reception conditions.<sup>509</sup> For example, if a person leaves a designated place of residence, fails to report to an appointment, or has previously applied for protection in the same Member State they are in danger of losing protection. That the applicant may have valid reasons for failure to comply with such formal requirements, it could simply be that States may wish to penalize certain acts.<sup>510</sup>

Eventually, Article 7 of the 2013 Recast Reception Directive addresses freedom of movement, whereas Article 8 leaves the discretion to Member States to determine the reasons for detention. Access to education is granted and can be provided in accommodation centers, as well.<sup>511</sup> Finally, Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged.<sup>512</sup>

Where housing is provided in kind, it should take one or a combination of the following forms: (a) premises used for the purpose of housing applicants during the examination of an application for international protection made at the border or in transit zones; (b) accommodation centers which guarantee an adequate standard of living; or (c) private houses, flats, hotels or other premises adapted for housing applicants (Article 18).

All in all, Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.

### **3.2. The 2013 Revised Procedure Directive**

The 2013 Revised Procedures Directive (Directive 2013/32/EU) aims at fairer, quicker and better-quality asylum decisions, asylum seekers with special needs will receive the necessary support to

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<sup>509</sup> Article 20 of the Directive 2013/33/EU.  
Garlick, 2006, p. 50.

<sup>510</sup> Article 20 of the Directive 2013/33/EU.  
Garlick, 2006, p. 50.

<sup>511</sup> Article 14 of the Directive 2013/33/EU.

<sup>512</sup> Article 15 of the Directive 2013/33/EU.

explain their claim, and, in particular, there will be greater protection of unaccompanied minors and victims of torture.<sup>513</sup>

This Directive sets out rules on the entire process of claiming asylum, including: how to apply, how the application will be examined, what help the asylum seeker will be given, how to appeal and whether the appeal will allow the person to stay on the territory, what can be done if the applicant absconds or how to handle repeated applications.<sup>514</sup>

A key consideration for establishing whether or not the application for international protection is well founded is the safety of the applicant in his or her country of origin.<sup>515</sup> Where a third country can be regarded as a safe country of origin, Member States can designate it as safe and presume its safety for a particular applicant, unless the applicant presents counter-indications.<sup>516</sup>

Moreover, Member States are not obliged to assess the substance of an application for international protection where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to that country.<sup>517</sup>

Concernedly, Member States are not obliged to assess the substance of an application for international protection where the applicant, due to a sufficient connection to a third country as defined by national law, can reasonably be expected to seek protection in that third country, and there are grounds for considering that the applicant will be admitted or readmitted to that country.<sup>518</sup>

As a result, an asylum seeker who, for instance, finds himself/herself in Serbia and states that he/she would like to continue his/her journey to Germany where he/she will lodge the application for international protection, could face uncertainty about his/her application. In other words, upon his/her arrival in Germany, he/she could be returned to Serbia on the ground of a readmission agreement signed between the two countries. It is possible that the applicant could then be kept in this state of bouncing back and forth between countries.

Furthermore, when defining to whom the status of refugee or subsidiary protection status can be granted, the 2013 Revised Procedures Directive awards it only to third country nationals and stateless persons. This means the Directive effectively turns a blind eye to the possibility that EU citizens may also want to apply for the protection in another Member State (Article 2(j) and (k)). This is incompatible with the core values of the Refugee Convention and international law, especially because the right to seek asylum is not limited by nationality or geography.<sup>519</sup>

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<sup>513</sup> European Commission (a), 2014, p.3.

<sup>514</sup> European Commission (a), 2014, p. 4.

<sup>515</sup> Para (40) of the Directive 2013/32/EU.

<sup>516</sup> Para (40) of the Directive 2013/32/EU.

<sup>517</sup> Para (43) of the Directive 2013/32/EU.

<sup>518</sup> Para (44) of the Directive 2013/32/EU.

<sup>519</sup> Lavrysen, 2012, p. 213.

UNHCR (b), p. 4.

The Directive includes a number of accelerated procedures that potentially contradict Article 31 of the 1951 Convention. In the 1951 Convention, states may not penalize refugees for any of the following: illegal entry, the destruction of documents that would have helped to establish their identity or nationality, or the refusal to provide fingerprints. Under the Directive, however, accelerated procedures affect any applicants who are suspected of committing any of the afore-listed acts.<sup>520</sup> Similarly, measures to address the smuggling and trafficking of individuals, which have increased recently due to the lack of possibilities to migrate legally, can likewise restrict refugees' access to asylum.<sup>521</sup>

Fortunately, the 2013 Recast Procedure Directive considerably reduces the number of accelerated procedures related to inadmissible applications, but it still maintains, with slight modifications to the notion of a safe third country, leaving possible its excessive use.<sup>522</sup> For instance, a country may be deemed 'safe' if it has ratified the Refugee Convention, has adopted asylum law, and has ratified the ECHR, though it is not necessarily required that legislation is effective in its practice.<sup>523</sup>

On the other hand, one of the procedural guarantees that ensures better protection of asylum seekers is the fact that Member States can neither reject nor exclude from examination the application for international protection based on the sole ground that they have not been made as soon as possible.<sup>524</sup> In addition, Member States should ensure that the examination procedure is concluded within six months of the lodging of the application or not exceeding nine months (Article 31(3)).

Finally, the Recast Procedure Directive stipulates that Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal.<sup>525</sup> This provision lifts the burden from the ECtHR, which used to be overloaded with lodged applications related to the absence of an effective remedy and the right to remain in the territory.

### **3.3.The 2011 Recast Qualification Directive**

The 2011 Recast Qualification Directive (Directive 2011/95/EU) clarifies the grounds for granting international protection, thus making asylum decisions more robust, and improves access to rights and integration measures for beneficiaries of international protection.<sup>526</sup>

Provisions of the recast Qualification Directive set forth a series of rights on protection from refoulement, residence permits, travel documents, access to employment, access to education,

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<sup>520</sup> Garlick, 2006, pp. 56-58.

Article 31(8) of the Directive 2013/32/EU.

<sup>521</sup> Nicholson, 2006, p. 535

<sup>522</sup> Mink, 2012, p. 146.

<sup>523</sup> Article 39(2) of the Directive 2013/32/EU.

Garlick, 2006, pp. 56-58

<sup>524</sup> Article 10(1) of the Directive 2013/32/EU.

<sup>525</sup> Article 46 of the Directive 2013/32/EU.

<sup>526</sup> European Commission (a), 2014, p.3.



social welfare, healthcare, access to accommodation and access to integration facilities, as well as specific provisions for children and vulnerable persons.<sup>527</sup>

The value of the recast Qualification Directive lies in the fact that it provides a second type of international protection, i.e. subsidiary protection, which can be regarded as complementary and additional to the refugee protection enshrined in the Geneva Convention.<sup>528</sup>

According to Article 2(f) of the Directive 2011/95/EU, persons eligible for subsidiary protection are third country nationals or stateless persons who do not qualify as a refugee, but, in respect of substantial grounds, have been shown for believing that the person concerned, if returned to his or her country of origin, or, in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm.

Serious harm is defined as the death penalty or execution, torture or inhuman or degrading treatment or punishment in the country of origin, or serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.<sup>529</sup>

Refugee and subsidiary protection apply regardless of whether the persecuting actor or source of serious harm is the State, parties or organizations controlling the State or a substantial part of the territory of the State, or non-State actors, if it can be demonstrated that the actors previously mentioned, including international organizations, are unable or unwilling to provide protection against persecution or serious harm.<sup>530</sup>

However, the rights attached to the refugee status are more elaborate than those attached to the subsidiary protection status. Hence, they should be more effectively aligned, since differentiating social benefits according to the type of residence permit amounts to discrimination, and it should not be assumed that protection needs of subsidiary protection beneficiaries are of shorter duration than the need for protection under the 1951 Convention.<sup>531</sup>

While these stipulations act in the applicant's favor, there are still some weak points to this directive. Namely, Article 4 states that Member States may consider it the duty of the applicant to submit 'as soon as possible' all the elements needed to substantiate the application for international protection. These elements consist of the applicant's statements and all documentation within the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection.

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<sup>527</sup> European Commission (a), 2014, p.6.

<sup>528</sup> Lavrysen, 2012, p. 213.

<sup>529</sup> Article 15 of the Directive 2011/95/EU

<sup>530</sup> Article 6 of the Directive 2011/95/EU

<sup>531</sup> UNHCR (b), p.9.

Depending on the meaning attributed to ‘as soon as possible’, it should be remembered that various circumstances such as trauma, feelings of insecurity, or language problems may result in a delay in the appropriate substantiation of the claim.<sup>532</sup> Aligned with the burden of proof which the applicant is responsible for providing, it should be noted that there might be certain limits to what the asylum-seeker is able to submit and that persons in need of international protection may arrive in asylum countries with the barest of necessities.

Furthermore, the application of the internal protection alternative under the Qualification Directive is incompatible with the standards of the Refugee Convention and international law. This is because it allows a refugee-receiving state to deny refugee status on the basis that the applicant has an alternative area they could presumably safely return to within their country of origin.<sup>533</sup>

This provision is potentially problematic because it allows Member States to deny protection based on three grounds: the applicant (a) has no well-founded fear of being persecuted, or is not at real risk of suffering serious harm, or (b) has access to protection against persecution or serious harm as defined in Article 7, and he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.<sup>534</sup>

To put things differently, the notion of internal protection has to satisfy two standards, possibility and reasonableness. Relocation must be possible in that the applicant will no longer suffer persecution in the area of relocation, and, to be reasonable, the applicant will be able to meet some basic standard of living in the area of relocation.<sup>535</sup>

Additionally, it is of utmost importance for states to consider whether the applicant has access to protection against persecution or serious harm in the relevant location. This assessment must be based on precise and up-to-date information from sources including UNHCR and the European Asylum Support Office.<sup>536</sup>

Nevertheless, the well-founded fear harbored by the asylum applicant’s home to the area of relocation may cause the applicant to be unwilling to seek a state’s protection. This fear alone is, under the language of the Refugee Convention, a ground for international protection.<sup>537</sup>

Therefore, under a country-wide fear or persecution approach, the applicant would have to prove that he/she would face persecution on a convention ground even in parts of their home country to which he/she had never travelled, or with which he/she was as unfamiliar with as the status determination authority.<sup>538</sup>

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<sup>532</sup> UNHCR (b), p.15.

<sup>533</sup> Eaton, 2012, p.766, p.791.

Article 8 of the Directive 2011/95/EU

<sup>534</sup> Eaton, 2012, p. 777.

<sup>535</sup> Eaton, 2012, p. 771.

<sup>536</sup> UNHCR (b), p.4.

<sup>537</sup> Eaton, 2012, p. 769.

<sup>538</sup> Eaton, 2012, p.770.

As to the substance of the recast Directive, first of all there is a wider definition of family members of refugees and persons with subsidiary protection.<sup>539</sup> However, the personal scope of the Directive remains limited to third-country nationals and stateless persons only, not foreseeing regulation of asylum claims of EU citizens, hence remaining incompatible with the Geneva Convention on this point as well.<sup>540</sup>

#### 4. The CEAS and Asylum-Seeking Minors

The CEAS still contains provisions that sanction the detention of asylum seekers in certain circumstances with no exemptions regarding children.<sup>541</sup> Moreover, state practice indicates that a great number of children seeking international protection in the EU are detained, justified by the argument that the action is protective detention.

Notwithstanding, Article 37 of the CRC clearly states that no child shall be deprived of his or her liberty unlawfully or arbitrary, and, if used, it must only be done so as a measure of last resort and for the shortest period of time. Furthermore, the Committee on the Rights of a Child has clarified in its General Comment No.6, that detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof.<sup>542</sup>

In the case scenario that a child is detained, states must be guided by the best interest of the child principle and ensure that emphasize is on ‘care’ and not ‘detention’.<sup>543</sup> Moreover, accelerated procedures should be implemented in order to place minors into other forms of appropriate accommodation. Asylum seeking minors shall be provided with prompt and free access to legal and other appropriate assistance, and ensured the right to education.<sup>544</sup>

When it comes to asylum-seeking minors, states have an obligation to set up a functioning asylum system and, in particular, to enact legislation that addresses the particular treatment of unaccompanied and separated children.<sup>545</sup> States must also build capacities necessary to realize this treatment in accordance with applicable rights codified in the CRC and other international human rights, refugee protection or humanitarian instruments to which the state is party.<sup>546</sup>

Asylum-seeking minors shall enjoy access to asylum procedures and other complementary mechanisms providing international protection, irrespective of their age.<sup>547</sup> In order to properly assess asylum claims of minors, information on their situation, including those belonging to

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<sup>539</sup> Peers, 2012, p. 207.

<sup>540</sup> Article 2 (d) of the Directive 2011/95/EU.

Peers, 2012, p. 208.

<sup>541</sup> Smyth Ciara, 2013, p. 111.

<sup>542</sup> General Comment No.6, 2005, para 61.

<sup>543</sup> General Comment No.6, 2005, para 63.

<sup>544</sup> General Comment No.6, 2005, para 63.

<sup>545</sup> General Comment No.6, 2005, para 64.

<sup>546</sup> General Comment No.6, 2005, para 64.

<sup>547</sup> General Comment No.6, 2005, para 66.

minorities or marginalized groups, should be included in government efforts to collect country of-origin information.<sup>548</sup>

In the case that the requirements for granting refugee status under the 1951 Refugee Convention are not met, unaccompanied and separated children should benefit from available forms of complementary protection to the extent determined by their protection needs.<sup>549</sup> They should also be ensured the enjoyment of all human rights granted to children in the territory or subject to the jurisdiction of the State, including those rights that require a lawful stay in the territory.<sup>550</sup>

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<sup>548</sup> General Comment No.6, 2005, para 75.

<sup>549</sup> General Comment No.6, 2005, para 77.

<sup>550</sup> General Comment No.6, 2005, para 77.

## Chapter III

The first part of this Chapter explores the asylum system in the Republic of Serbia and analyses the quality of the same, providing information on legal framework governing the topic as well as legal harmonization with EU legislation. It then tests the principle of equality and non-discrimination and researches the rights of asylum-seekers and their integration into Serbian society. Furthermore, it ties the right to education of asylum-seeking minors to the asylum system and places the obligation of fulfillment of this right on the state bodies. The second part provides an overview of the safe country of origin and safe third country concept, since this has an enormous impact on the potential protection ASMs would receive in Serbia. Finally, this Chapter provides statistical information and asylum in practice in 2018.

### 1. Asylum System in Serbia

Today, migration in the Republic of Serbia is regulated by the Law on Foreigners (Official Gazette of the RS, No. 97/08), Law on State Border Protection (Official Gazette of the RS, No. 97/08), Law on Migration Management (Official Gazette of the RS, No. 107/2012), Law on Employment of Foreigners (Official Gazette of the RS No. 128/2014), Law on ratification of the Agreement signed between the Republic of Serbia and the European Community on readmission of persons residing without authorization (Official Gazette of the Republic of Serbia –International Agreements No. 103/2007) as well as Laws on ratification of bilateral Agreements on Readmission.<sup>551</sup> Furthermore, migration policy is governed by strategies developed by the Republic of Serbia including: Migration Management Strategy (Official Gazette of the RS, No.59/09), Integrated Border Management Strategy in the Republic of Serbia (Official Gazette of the RS, No. 111/2012) and the Strategy for the Reintegration of Returnees based upon the implementation of the Readmission Agreement (Official Gazette of the RS, No. 15/09), together with the accompanying Action Plans.<sup>552</sup>

By opening Chapter 24 on Justice, Freedom and Security, in the process of negotiation to join the EU, the Republic of Serbia has assumed the duty of harmonizing its overall legislation with the EU's. This includes synchronizing the area of migration and asylum. However, so far Serbia has only partially harmonized the legal framework on family reunification, status of third country nationals with permanent residence and third country nationals who are scientists or students with corresponding Directives, while provisions of the EU Directive on Blue Card and the Directive on Single Residence and Work Permit are not harmonized with national legislation at all.<sup>553</sup>

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<sup>551</sup> Government of the Republic of Serbia, 2016, p. 2.

<sup>552</sup> Government of the Republic of Serbia, 2016, p. 2.

<sup>553</sup> Government of the Republic of Serbia, 2016, p. 3.

Moreover, the area of irregular migrations is only partially harmonized with the provisions of the Directive 2002/90/EC which stipulates facilitation of illegal entry, transit or stay, Council Directive 2004/81/EC on residence permits for third country nationals victims of human trafficking, Council Directive 2004/82/EC on carriers' obligations to exchange information on passengers, and Council Directive 2008/115/EC on common standards and procedures for the return of third country nationals who are residing without authorization.<sup>554</sup>

The Criminal Code has been partially harmonized with Framework Decision 2002/946/JHA on strengthening of the penal framework. Its purpose is to prevent facilitation of illegal entry, transit or stay.<sup>555</sup> On the other hand, it is important to state that Serbia has the obligation under international refugee law not to penalize asylum-seekers for their illegal entry, as long as they immediately provide the reasons for the same and express their intention to seek asylum in the Republic of Serbia.

Furthermore, the Republic of Serbia has partially harmonized its legislation with provisions of Directive 2009/52/EC on minimum standards for sanctions and measures against employers who are employing third country nationals residing without authorization.<sup>556</sup> Even though there is no provision in the legislation referring to employers who are employing irregular migrants, general provisions have been put in place within the Labour Law stipulating punishment of illegal employment.<sup>557</sup>

In addition, the new Law on Employment of Foreigners is partially harmonized with the Directive 2009/52/EC.<sup>558</sup> Hence, the 2009 Law on Employment of Foreigners stipulates misdemeanor liability of employers who employ a foreigner contrary to the provisions of the Law, or, in other words, a foreigner who has not been granted temporary or permanent residence (irregular migrant).<sup>559</sup> In particular, this law prescribes inspection supervision of the fulfillment of the conditions of employment of foreigners, which is performed by the Labour Inspectorate.<sup>560</sup> In case an irregular immigrant is employed, employers may be subject to fines and/or the prohibition of conducting business.<sup>561</sup> This law does not criminalize employment of irregular migrants.<sup>562</sup>

Serbia has undergone the same trend as the European Union of having Readmission Agreements. These agreements regulate the procedure of returning, non-authorized persons residing in the

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<sup>554</sup> Government of the Republic of Serbia, 2016, p. 3.

<sup>555</sup> Government of the Republic of Serbia, 2016, p. 3.

<sup>556</sup> Government of the Republic of Serbia, 2016, p. 3.

<sup>557</sup> Government of the Republic of Serbia, 2016, p. 3.

<sup>558</sup> Government of the Republic of Serbia, 2016, p. 3.

<sup>559</sup> Government of the Republic of Serbia, 2016, p. 3.

<sup>560</sup> Government of the Republic of Serbia, 2016, p. 3.

<sup>561</sup> Government of the Republic of Serbia, 2016, p. 3.

<sup>562</sup> Government of the Republic of Serbia, 2016, p. 3.

territory of another country. To date, all Readmission Agreements signed by the Republic of Serbia are completely harmonized with EU standards.<sup>563</sup>

Regarding the implementation of the Readmission Agreement with the EU, there are 19 implementing Protocols signed so far with the following countries: Italy, Slovenia, France, Hungary, Great Britain, Austria, Malta, Slovakia, Germany, Romania, Bulgaria, Estonia, and Czech Republic, countries of Benelux, Cyprus, Greece, Sweden, Portugal and Spain.<sup>564</sup> In the case of bilateral Readmission Agreements, 13 countries have signed them: Bosnia and Herzegovina, Denmark, Canada, Norway, Croatia, Switzerland, Macedonia, Moldova, Albania, Montenegro, Russian Federation, Portugal and Spain.<sup>565</sup>

Finally, institutional framework responsible for monitoring of the area of migration must also be considered. In Serbia this consists of all relevant institutions involved in the migration system, which are primarily: Ministry of Interior, Commissariat for Refugees and Migration, Ministry of Foreign Affairs, Ministry of Justice and the Ministry of Labour, Employment, Veteran and Social Policy of the Republic of Serbia.<sup>566</sup> Furthermore, both the civil society sector and international organizations are very important stakeholders involved in the area of migration monitoring.

The Commissariat for Refugees and Migration of the Republic of Serbia serves as the focal point in the area of migration management and has, thus, established a system for collecting data and information on migration flows and preparing a national migration profile.<sup>567</sup> However, the system should be further developed and improved in order to have statistics aligned with requirements of Regulation 862/2007/EC.<sup>568</sup> In addition, local migration councils have been established, as foreseen by the Law on Migration Management in 128 local government units. These are composed of representatives of various institutions on the local level relevant for the realization of the rights of *migrants*, with the goal to coordinate activities of local administration, police administration, employment service, school administrations, local trustee, a health center, a social work center, the Red Cross and civil society organizations.<sup>569</sup>

Furthermore, the core stakeholders in the area of migration are most certainly the Ministry of Interior, the Border Police Directorate, and the Department for Foreigners. With 70 employees in total, who are thus responsible for the area of legal migration at the central level, they have many tasks. Some include the improvement and coordination of activities in the field of movement and stay of foreign nationals, as well as responsibility for the implementation of planned measures

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<sup>563</sup> Government of the Republic of Serbia, 2016, p. 4.

<sup>564</sup> Government of the Republic of Serbia, 2016, p. 4.

<sup>565</sup> Government of the Republic of Serbia, 2016, p. 4.

<sup>566</sup> Government of the Republic of Serbia, 2016, p. 4.

<sup>567</sup> Government of the Republic of Serbia, 2016, p. 4.

<sup>568</sup> Government of the Republic of Serbia, 2016, p. 4.

<sup>569</sup> Government of the Republic of Serbia, 2016, p. 4.

referred to the harmonization of the legislation in this field.<sup>570</sup> This work at the local level is done by organizational units in Regional police directorates, and the number of police officers performing tasks referring to foreigners' issues in the Regional police directorates is around 300.<sup>571</sup>

The Reception Centre for Foreigners in Padinska Skela, which operates under management by the Department for Foreigners, is of primary importance for Serbia. Here, foreigners who cannot be immediately forcibly removed, foreigners whose identity has not been determined, and/or foreigners who do not have a travel document(s) in their possession, are accommodated.<sup>572</sup> The capacity of the Reception Centre for Foreigners is 144 people. 35 police officers help run the Centre.<sup>573</sup> For the purpose of accommodation of the so-called *irregular migrants*, especially bearing in mind the needs of minors and other vulnerable groups, there are two rooms which were refurbished in June 2015. These rooms accommodate mothers with children and can accommodate eight persons.<sup>574</sup>

Within the Border Police Directorate, the Department for Suppression of Cross-Border Crime, Irregular Migration and Human Trafficking, is also responsible for managing issues of irregular migration.<sup>575</sup> This Department consists of 35 police officers.<sup>576</sup> Additionally, at the regional level, sections that deal with this issue function within the Border Police Regional centers and organizational units within the Regional police directorates.<sup>577</sup>

In the framework of the Criminal Police Directorate, there are nine police officers employed by the Service who fight against organized crime.<sup>578</sup> This includes the suppression of smuggling of migrants within the Section for suppression of human trafficking and human smuggling, which is part of the Department for general organized crime.<sup>579</sup>

The body that is primarily responsible for the conclusion and implementation of the Readmission Agreements in the Republic of Serbia is the Administration Affairs Directorate.<sup>580</sup> Here, the Section for the Implementation of Readmission Agreements functions at Serbia's central level and consists of 20 employees.<sup>581</sup> Furthermore, the Border Police Directorate implements urgent procedures and has a secondary competence when it comes to foreigners' issues and operating at

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<sup>570</sup> Government of the Republic of Serbia, 2016, p. 4.

<sup>571</sup> Government of the Republic of Serbia, 2016, p. 4.

<sup>572</sup> Government of the Republic of Serbia, 2016, p. 5.

<sup>573</sup> Government of the Republic of Serbia, 2016, p. 5.

<sup>574</sup> Government of the Republic of Serbia, 2016, p. 5.

<sup>575</sup> Government of the Republic of Serbia, 2016, p. 5.

<sup>576</sup> Government of the Republic of Serbia, 2016, p. 5.

<sup>577</sup> Government of the Republic of Serbia, 2016, p. 5.

<sup>578</sup> Government of the Republic of Serbia, 2016, p. 5.

<sup>579</sup> Government of the Republic of Serbia, 2016, p. 5.

<sup>580</sup> Government of the Republic of Serbia, 2016, p. 5.

<sup>581</sup> Government of the Republic of Serbia, 2016, p. 5.



the state border. Questions related to readmission, and especially those related to transit, require cooperation at both horizontal and vertical levels with the Ministry's other organizational units.<sup>582</sup>

Additionally, the network of diplomatic-consular representations within the Ministry of Foreign Affairs is responsible for issuing travel documents for the return of persons and for performing interviews with persons under the readmission process.<sup>583</sup> The Commissariat for Refugees and Migration is responsible for migration management and is the bearer of the Strategy for Reintegration of Returnees upon the Readmission Agreement.<sup>584</sup>

The institution of asylum in the Republic of Serbia is regulated by the new Law on Asylum and Temporary Protection ("Official Gazette RS", No. 24/2018), which replaced the 2007 Asylum Law, Law on General Administrative Procedure ("Official Gazette of the SRJ" No. 33/97 and 31/01 and "Official Gazette of the RS" No. 30/2010), the new 2018 Foreigners Law ("Official Gazette of the RS", No. 24/18) replaced the 2008 Law on Foreigners ("Official Gazette of the RS", No. 97/08) and the Law on Administrative Disputes ("Official Gazette of the RS" No. 111/09).<sup>585</sup> Furthermore, bylaws were adopted on the basis of the 2018 Law on Asylum and Temporary Protection (LATP). For instance, the manner and procedure of registration, as well as the content of the registration certificate are defined in the Rulebook on the Procedure of Registration, Design and Content of the Certificate on Registration of a Foreigner Who Expressed Intention to Seek Asylum (Rulebook on Registration, Official Gazette RS, 42/18).<sup>586</sup> This particular rulebook contains novelties which mainly relate to the fact that LATP integrated the processes of both the recording of the intention to seek asylum and the act of registration of a foreigner.<sup>587</sup>

The novelty introduced by the 2018 Foreigners is that the Government shall, at the proposal of the Minister of Interior, in case of special circumstances related to illegal presence of an increased number of foreigners in the territory of Serbia who cannot not be returned to the country of origin due to application of the principle of *non-refoulement*, or who cannot leave Serbia due to circumstances beyond their control, adopt an ordinance regulating their tolerated presence on the territory of the Republic of Serbia, with limited time of implementation.<sup>588</sup> What is problematic here is that the Government has been given wide discretionary powers to adopt this regulation and it still remains unclear as to what is meant by a *tolerated presence*, as this term has not been defined anywhere.<sup>589</sup>

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<sup>582</sup> Government of the Republic of Serbia, 2016, p. 5.

<sup>583</sup> Government of the Republic of Serbia, 2016, p. 5.

<sup>584</sup> Government of the Republic of Serbia, 2016, p. 5.

<sup>585</sup> Government of the Republic of Serbia, 2016, p. 5.

<sup>586</sup> BCHR, 2018, p. 20.

<sup>587</sup> BCHR, 2018, p. 20.

<sup>588</sup> BCHR, 2018, p. 23.

<sup>589</sup> BCHR, 2018, p. 23.

Nevertheless, the 2018 Law on Asylum and Temporary Protection is a core legal document that regulates the principles and conditions for the acquisition and termination of asylum, subsidiary protection, temporary protection, accommodation of asylum-seekers during the procedure, the status, and the rights and obligations of those persons who have been granted one of the aforementioned protection statuses.

The previous 2007 Law on Asylum was partially harmonized with Directives 2003/86/EC, 2013/32/EU, 2001/55/EC, 2011/95/EU and 2013/33/EU when referring to the existence of a specific body responsible for implementation of the asylum procedure; additionally, each foreign national is allowed to file an asylum application and stay in Serbia until the procedure is finished; they will be issued an identity card; asylum seekers are entitled to interpreters and legal assistance free of charge during the procedure; unaccompanied minors and persons with special needs are provided with a guardian during the entire procedure; an interview (and written minutes) is an obligatory part of the procedure; the decision is brought in a written format; and the possibility of filing a complaint as well as the right to seek and be granted court protection exist.<sup>590</sup> Asylum seekers also have the possibility to file an additional application.<sup>591</sup> Obligations of the asylum-seekers have also been harmonized with the Directives and UNHCR plays an active role in the procedure and monitoring process.<sup>592</sup> Improvements foreseen by the new 2018 LATP will be further elaborated in the following parts of the dissertation, whereas the chapters devoted to the asylum procedure remain the same based on the previous Law on Asylum.

The concepts of “safe country of origin” and “safe third country” are described in the LATP in Articles 44 and 45, respectfully. It also sets forth the definitions of asylum (Article 24), subsidiary protection (Article 25), temporary protection (Article 74), and first asylum country (Article 43). Furthermore, provisions are in place to handle matters of expulsion, cessation and exemption, and provisions exist that refer to the rights and obligations of the persons granted protection, provisions on accommodation, reunion of families, information and integration preservation. In addition, the inevitable governing principle of prohibition of return is replicated in new legislation. Similarly, even though provisions on employment, education, social protection and health care exist and are said to be accessible, results suggest this access is modest and deserves special attention.

Furthermore, provisions on material conditions of reception are put in place and are at asylum seekers’ disposal. These include housing, clothes, food, financial assistance, and medical screening is obligatory for all asylum-seekers accommodated in reception centers.<sup>593</sup> Additionally, special provisions that refer to vulnerable persons, including unaccompanied minors, persons with special needs, pregnant women, single parents, victims of torture, rape or other forms of mental,

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<sup>590</sup> Government of the Republic of Serbia, 2016, p. 6.

<sup>591</sup> Government of the Republic of Serbia, 2016, p. 6.

<sup>592</sup> Government of the Republic of Serbia, 2016, p. 6.

<sup>593</sup> Government of the Republic of Serbia, 2016, p. 6.

psychological or sexual violence and the appointment of a legal guardian for unaccompanied minors is obligatory according to adopted domestic provisions.<sup>594</sup>

At this time, Serbia is not in a position to implement Regulation (EC) No. 2725/2000 and Council Regulation (EC) No. 407/2002 on the establishment of the ‘EURODAC’ system for the comparison of fingerprints, nor is it ready to conduct Council Regulation (EC) No. 343/2003 on introducing criteria and mechanisms for determining the Member State responsible for reviewing asylum applications in which a third-country national submits in one of the Member States (“Dublin Regulation”).<sup>595</sup> This is because Serbia is not yet an EU Member State and Dublin Regulation is to be implemented two years before the accession.<sup>596</sup>

However, in 2013 the Republic of Serbia established an electronic biometric database with fingerprints and photographs administered by the Republic of Serbia Ministry of Interior.<sup>597</sup> In particular, collected fingerprint data are transferred to an electronic record that is compatible with the specifications of EURODAC.<sup>598</sup> Therefore, the Asylum Office has a database for the collection of administrative information, i.e. personal data related to asylum seekers.<sup>599</sup>

The asylum procedure in Serbia is governed by the 2018 Law on Asylum and Temporary Protection and the 2007 Asylum Law, since LATP stipulates that the Asylum Law shall continue to apply during procedures initiated prior to its coming into effect, unless the 2018 Law provisions are more favorable for the applicants.<sup>600</sup> Bearing in mind that the asylum procedure defined in the 2007 LA is described thoroughly in the following section, here only the most important solutions and novelties provided in the LATP will be addressed.

In particular, the novelties introduced by the LATP with respect to the asylum procedure concern the Asylum Office actions that differ during regular asylum procedures, accelerated asylum procedures and the asylum procedures at the borders or in transit zones.<sup>601</sup> In addition, the new solution foreseen by the LATP is that, under certain conditions, it allows submission of subsequent asylum applications and that the deadlines for the decision of the first instance authority have been set.<sup>602</sup>

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<sup>594</sup> Government of the Republic of Serbia, 2016, p. 6.

<sup>595</sup> Government of the Republic of Serbia, 2016, p. 6.

<sup>596</sup> Government of the Republic of Serbia, 2016, p. 6.

<sup>597</sup> Government of the Republic of Serbia, 2016, p. 8.

<sup>598</sup> Government of the Republic of Serbia, 2016, p. 8.

<sup>599</sup> Government of the Republic of Serbia, 2016, p. 8.

<sup>600</sup> BCHR, 2018, p. 33.

<sup>601</sup> BCHR, 2018, p. 33.

<sup>602</sup> BCHR, 2018, p. 33.

Nevertheless, the Asylum Office that exists within the Ministry of Interior and the Border Police Directorate remain responsible for conducting first instance asylum procedure.<sup>603</sup> The Asylum Office has been expanded to 23 positions, and there are now 29 officials in total.<sup>604</sup> Within those 29 positions, there are four designated places for interpreters and 19 places for officers working on implementing procedures upon receiving an asylum request.<sup>605</sup>

Therefore, according to the Article 36 of the LATP, the asylum procedure is initiated once an application has been submitted to an authorized Asylum Office officer. This application must arrive via the prescribed form within 15 days of the date of registration at the latest. In case that the authorized Asylum Office officer does not enable a foreigner who expressed intention to submit his/her asylum application within this time limit, a foreigner may themselves fill in the asylum application form within eight days after the expiry of the 15 day time limit.<sup>606</sup> Eventually, Article 36 (3) of the LATP designates that the asylum procedure shall be considered initiated after the submission of the asylum application form has been submitted to the Asylum Office. This is followed by an interview, which takes place at the earliest possible time before the Asylum Office officer who has undergone the necessary training, and may take place more than once in order to establish the facts of the individual's situation.<sup>607</sup>

An accelerated procedure is another novelty prescribed by the LATP which sets out that a decision on the asylum application shall be passed in an accelerated procedure in cases prescribed by the Law.<sup>608</sup> The reasons for it are set forth in Article 40 of the LATP, and are reserved for situations when the applicant has presented facts that are irrelevant to the examination of the asylum application in substance; has consciously misled the Asylum Office by presenting false information or forged documents; has failed to present relevant information; has concealed documents that could have a negative effect on the decision; has destroyed or concealed documents that establish his/her identity and/or nationality in bad faith so as to provide false information about his/her identity and/or nationality; has presented manifestly inconsistent, contradictory, inaccurate, or unconvincing statements, contrary to the verified information about the country of origin, rendering his/her application non-genuine; has submitted a subsequent asylum application that is admissible; has submitted this/her asylum application for the clear purpose of postponing or preventing the enforcement of a decision that would result in his/her removal from the Republic of Serbia; when he/she presents a threat to national security or public order; or when it is possible to apply the safe country of origin concept.

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<sup>603</sup> Government of the Republic of Serbia, 2016, p. 6.

<sup>604</sup> Government of the Republic of Serbia, 2016, p. 6.

<sup>605</sup> Government of the Republic of Serbia, 2016, p. 6.

<sup>606</sup> Article 36 of the LATP.

<sup>607</sup> BCHR, 2018, p. 34.

<sup>608</sup> Article 40 (1) of the LATP.

The Asylum Office is obliged to inform the applicant that the decision regarding an application shall be made in an accelerated procedure.<sup>609</sup> Typically, the decision shall be passed within 30 days from the date of application submission or the admissible subsequent asylum application.<sup>610</sup> In addition, the appeals time limit has been curtailed, and, consequently, the decision of the Asylum Office made in an accelerated procedure may be appealed. This is done via the Asylum Commission within eight days from the date the decision is served.<sup>611</sup> However, it is important to note that the LATP outlines that an accelerated procedure shall not be applied to asylum applications submitted by unaccompanied minors.<sup>612</sup>

Another novelty introduced by the LATP that was not foreseen by the 2007 Law on Asylum, is the possibility to submit a subsequent asylum application in case the applicant provides evidence that the circumstances relevant to recognizing his/her right to asylum have changed substantially or if he/she is able to provide evidence that he/she did not present in the previous procedure due to justified reasons.<sup>613</sup> This action is possible after a rejected application take effect, or by discontinuing the procedure because the applicant withdrew his/her application via a written statement.<sup>614</sup> The Asylum Office's deadline to decide on a subsequent asylum application is no later than within 15 days from the date of the application.<sup>615</sup>

The first instance procedure before the Asylum Office may be completed by a decision to uphold the application and recognize the right to refugee status or to subsidiary protection, a decision to reject the asylum application, a decision to discontinue the procedure or a decision to dismiss the application.<sup>616</sup> In other words, the LATP introduces new deadlines for decision-making, since the 2007 Law on Asylum did not contain specific provisions on deadlines and thus provisions of the GAPA applied stipulating that the Asylum Office had to pass a decision no later than 60 days from the date of the application.<sup>617</sup> One needs to note that in practice first instance decisions often exceeded the 60 days deadline.<sup>618</sup> Therefore, the new deadlines introduced by the LATP foresee that a decision on asylum application in the regular procedure must be passed within a maximum of three months from the date of an asylum application or the admissible subsequent asylum application.<sup>619</sup> The possibility to extend the time limit by three months in case the application includes complex factual or legal issues or in case of a large number of foreigners submitting asylum applications at the same time has also been provided.<sup>620</sup> An additional time limit for

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<sup>609</sup> BCHR, 2018, p. 35.

<sup>610</sup> BCHR, 2018, p. 35.

<sup>611</sup> Article 40 (5) of the LATP.

<sup>612</sup> BCHR, 2018, p. 35.

<sup>613</sup> BCHR, 2018, p. 35.

<sup>614</sup> BCHR, 2018, p. 35.

<sup>615</sup> BCHR, 2018, p. 36.

<sup>616</sup> BCHR, 2018, p. 36.

<sup>617</sup> BCHR, 2018, p. 36.

<sup>618</sup> BCHR, 2018, p. 36.

<sup>619</sup> BCHR, 2018, p. 36.

<sup>620</sup> BCHR, 2018, p. 36.

deciding on an asylum application may be extended up to three months exceptionally from previously stated reasons if it would be necessary to ensure a proper and complete assessment thereof.<sup>621</sup>

Moreover, the established Asylum Commission remains an independent second-instance body. When second instance decisions of the Asylum Commission is exhausted, it is possible to initiate an administrative dispute by filing a claim to the Administrative Court of the Republic of Serbia.<sup>622</sup> Finally, the Commissariat for Refugees and Migration provides adequate accommodation and basic life conditions to asylum seekers in Asylum Centers, as well as the integration of persons who have been granted asylum.<sup>623</sup>

A short reference here on appeal deadlines is helpful in understanding the full application process. Appeals may be submitted within 15 days from the serving of the first instance decision, if not otherwise specified; whereas, the time limit for appeals on the decisions of the Asylum Office made in accelerated procedures and the decisions dismissing asylum applications or subsequent asylum applications is shorter at just eight days from the date of serving the decision.<sup>624</sup> Finally, appeals on first instance decisions made in the procedure conducted at a border crossing, airport transit zone and inland ports may be filed to the Asylum Commission within five days from the date of serving.<sup>625</sup>

Finally, the only novelty regarding Administrative Court decisions on the disputes is that it provides for the suspensive effect of the appeal on the Asylum Commission decision.<sup>626</sup>

With regard to the visa, the visa policy legal framework consists of the Law on Foreigners (Official Gazette of RS, No. 24/18), the Law on Travel Documents (Official Gazette of RS, No.90/07, 116/08, 104/09, 76/2010and 62/14), Visa Rules (Official Gazette of RS, No.27/10 and 118/13), Regulation on more specific conditions to deny foreigners entry to the Republic of Serbia (Official Gazette of RS, No. 75/2009), Rules concerning more specifically-defined conditions and method of visa-issuing at border-crossing points (Official Gazette of RS, No.59/2009), and the Instructions for a visa application processing within the Visa Information System (issued by the MFA, 2012).<sup>627</sup> Since 2014, and in accordance with the adopted amendments on the Law on Travel Documents, the Republic of Serbia has abolished the issuance of exit visas for Serbian citizens – holders of Maritime and Shipping booklets as well as the issuance of other visas on the basis of bilateral agreements.<sup>628</sup>

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<sup>621</sup> BCHR, 2018, p. 36.

<sup>622</sup> Government of the Republic of Serbia, 2016, p. 7.

<sup>623</sup> Government of the Republic of Serbia, 2016, p. 7.

<sup>624</sup> Article 42 of the LATP.

<sup>625</sup> BCHR, 2018, p. 39.

<sup>626</sup> Article 96 (2) of the LATP.

<sup>627</sup> Government of the Republic of Serbia, 2016, p. 8.

<sup>628</sup> Government of the Republic of Serbia, 2016, p. 8.

Regarding the EC Regulation No. 539/2001 on the positive and the negative list of third countries, the Visa regime of the Republic of Serbia is partially aligned with the EU positive and negative list of third countries.<sup>629</sup> Hence, before its entry into the EU, it will be necessary to take measures to fully harmonize Serbia's visa regime with the EU's.<sup>630</sup> In practice this requires Serbia to have a list of countries whose nationals are not required to have an entry visa for the Republic of Serbia. This includes all EU Member States and 44 non-EU countries and holders of an UN laissez-passer.<sup>631</sup> There is also the list that includes 13 countries that are also on the negative list of the EU (Belarus, Bolivia, Cuba, Kazakhstan, Mongolia, Russian Federation, Tunisia, Turkey, Ukraine, Kuwait, Qatar, Oman and Bahrain), and 122 countries are required to have an entry visa for the Republic of Serbia.<sup>632</sup> However, due to the previously mentioned obligation to harmonize its legislation with the EU's legislation, it is necessary to abolish the visa regime with 33 countries from the positive list of the EU.<sup>633</sup> Therefore, a working group for Visa liberalization was established in 2015 on an inter-ministerial level in the Ministry of Foreign Affairs, the Ministry of the Interior and the Ministry of Trade, Tourism and Telecommunications in order to address further visa liberalization directions that will place Serbia in compliance with the EU positive and negative list.<sup>634</sup>

With respect to the EC Regulation No. 810/2009 on Visa Code, the Republic of Serbia is not fully aligned with respect to visa type, timeframe for visa issuance and providing legal protection in the case of visa refusal.<sup>635</sup> Regarding the EC Regulation No. 1683/1995 on uniform visa format, there is the need for further improvements regarding some characteristics of visa format.<sup>636</sup>

Finally, regarding the EC Regulation No. 512/EC 2004 on Visa Information System, a national Visa Information System (VIS) is modelled upon the system applied within EU Member States.<sup>637</sup> It is operational in 82 out of 91 diplomatic and consular posts of the Republic of Serbia abroad.<sup>638</sup> Consequently, it is still necessary to install VIS in the remaining nine diplomatic missions.<sup>639</sup>

Nevertheless, the main institutions in the field of visa policy are the Ministry of Foreign Affairs, its network of diplomatic and consular posts, and the Ministry of the Interior - Border Police Department, including border crossings and local police departments.<sup>640</sup>

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<sup>629</sup> Government of the Republic of Serbia, 2016, p. 8.

<sup>630</sup> Government of the Republic of Serbia, 2016, p. 8.

<sup>631</sup> Government of the Republic of Serbia, 2016, p. 8.

<sup>632</sup> Government of the Republic of Serbia, 2016, p. 8.

<sup>633</sup> Government of the Republic of Serbia, 2016, p. 8.

<sup>634</sup> Government of the Republic of Serbia, 2016, p. 8.

<sup>635</sup> Government of the Republic of Serbia, 2016, p. 9.

<sup>636</sup> Government of the Republic of Serbia, 2016, p. 9.

<sup>637</sup> Government of the Republic of Serbia, 2016, p. 9.

<sup>638</sup> Government of the Republic of Serbia, 2016, p. 9.

<sup>639</sup> Government of the Republic of Serbia, 2016, p. 9.

<sup>640</sup> Government of the Republic of Serbia, 2016, p. 9.

Regarding External Borders and Schengen, the basis for legal regulation of border control and security is found in the Law on the Protection of the State Border (RS Official Gazette No. 97/2008 of 27 October 2008 and 20/2015), and during the visa liberalization procedure a set of legal acts were adopted in the field of border security in order to achieve harmonization with EU standards: the Law on Foreigners (RS Official Gazette No. 97/2008), Travel Documents Act (RS Official Gazette No. 90/2007, 116/2008, 104/2009, 76/2010 and 62/2014), the Law on Managing Migrations (RS Official Gazette No. 107/2012), the Asylum Law (RS Official Gazette No. 109/2007), Criminal Code (RS Official Gazette No. 85/2005, 88/2005-cor., 107/2005-cor., 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014), Law on Criminal Procedure (RS Official Gazette No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), Law on Weapons (RS Official Gazette No. 09/1992, 53/1993, 67/1993, 48/1994, 44/1998, 39/2003, 101/2005, 85/2005, 27/2011, and 104/2013), Law on Police (RS Official Gazette No. 101/2005, 63/2009, 92/2011 and 64/2015), Working Arrangement on establishing operational cooperation between the Ministry of the Interior of the Republic of Serbia and the European Agency for the Management of Operational Cooperation at the External Border of the Member States of the European Union (Frontex).<sup>641</sup>

Provisions of the Law on the State Border Protection and Law on Foreigners are only partially harmonized with Regulation 562/2006/EC, Regulation (EU) 610/2013 and Regulation (EC) 810/2009.<sup>642</sup> The start of this harmonization can be found in sections that refer to conditions of entry, stamping of travel documents, facilitation of entry (for humanitarian reasons, national interests or international obligations), issuing visas at the borders, relaxation of border checks, thorough border checks, border surveillance by mobile and stationary units, special rules for specific types of traffic and border crossing for certain categories of persons, refusals of entry at the border, possibility for opening the common border crossings, and duration of stay (90 out of 180 days).<sup>643</sup>

The Integrated Border Management (IBM) strategy was adopted in 2012 and is not fully in compliance with the EU guidelines from 2006.<sup>644</sup> The body in charge of its application is the Border Police Directorate within the Republic of Serbia Ministry of Interior. It acts as the main coordinating authority in the implementation of the same.<sup>645</sup>

With respect to international legal standards on the matter, Serbia is a State Party to the 1951 Geneva Convention on Protection of Refugees and its 1967 Protocol.<sup>646</sup> Hence, not only is it

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<sup>641</sup> Government of the Republic of Serbia, 2016, p. 9.

<sup>642</sup> Government of the Republic of Serbia, 2016, p. 9.

<sup>643</sup> Government of the Republic of Serbia, 2016, p. 9.

<sup>644</sup> Government of the Republic of Serbia, 2016, p. 10.

<sup>645</sup> Government of the Republic of Serbia, 2016, p. 10.

<sup>646</sup> UN Treaty Collection, available at <https://treaties.un.org/Pages/Treaties.aspx?id=5&subid=A&lang=en> (last consulted on 15.08.2019.)



obliged to meet the provisions found in international treaties, but it must also adopt a domestic legal act. To do so, the Law on Asylum in 2007 and later on the 2018 LATP, as previously discussed, were adopted. Today the Serbian Constitution is a fine example of domestic adoption of this legal requirement. It guarantees the right to refuge in Article 57(1).

In accordance with the Refugee Convention, the Law on Asylum guarantees that no asylum seeker shall be held liable for illegal entry or presence in the Republic of Serbia provided that they apply for asylum without delay and they provide a valid explanation for their illegal entry or presence.<sup>647</sup> Therefore, this provision ensures unhindered access to the asylum procedure. Consequently, proceedings before misdemeanor courts for illegal entry or presence in Serbia may be discontinued in the event the court establishes that the defendant has expressed his/her intention to seek asylum in Serbia.<sup>648</sup>

Throughout 2014, 16,490 people in total have expressed their intention to seek asylum in the Republic of Serbia.<sup>649</sup> The data breakdown shows that out of this number, 1,563 were unaccompanied minors. Of those, 1,478 were boys and just 85 were girls.<sup>650</sup>

A reported 9,536 people resided in Serbia's asylum centers from 2008 to early 2014.<sup>651</sup> Of these people, Serbia's authorities granted just six of them refugee status and twelve were granted subsidiary protection.<sup>652</sup> These small numbers were all that existed despite the Law on Asylum being in force from 1 April 2008 until 31 December 2014.<sup>653</sup> By contrast, 577,995 persons have expressed their intention to seek asylum in Serbia during the course of 2015 and final result reveals that only 30 asylum claims were adopted by Asylum Office at the same year.<sup>654</sup>

### **1.1. Asylum System Related Definitions and Institutions**

Asylum represents the right to residence and protection accorded to an alien to whom, on the basis of a decision of the competent authority deciding on his/her application for asylum in the Republic of Serbia, refuge or another form of protection provided for by this Law was granted.<sup>655</sup>

An asylum-seeker is an alien who has filed an application for asylum on the territory of the Republic of Serbia, on whose application a final decision has not been made yet.<sup>656</sup> A refugee shall

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<sup>647</sup> Article 8 of the Law on Asylum.

<sup>648</sup> Article 65(1) of the State Border Protection Act.

Article 85 of the Aliens Act.

<sup>649</sup> BCHR, 2015, p. 17.

<sup>650</sup> BCHR, 2015, p. 17.

<sup>651</sup> BCHR, 2015, p. 20.

<sup>652</sup> BCHR, 2015, p. 20.

<sup>653</sup> BCHR, 2015, p. 20.

<sup>654</sup> Aida (b), 2016, p.13.

BCHR (b), p.261.

Azil.rs available at <http://azil.rs/pravo-na-azil-u-republici-srbiji-u-2015-godini/> (last consulted on 15.08.2019).

<sup>655</sup> Article 2 of the LA.

Article 2 (1) of the LATP.

<sup>656</sup> Article 2 of the LA.

be understood to mean a person who, on account of well-founded fear of persecution for reasons of race, sex, language, religion, nationality, membership of a particular social group or political opinions, is not in the country of his/her origin, and is unable or unwilling, owing to such fear, to avail him/herself of the protection of that country, as well as a stateless person who is outside the country of his/her previous habitual residence, and who is unable or unwilling, owing to such fear, to return to that country.<sup>657</sup>

Eventually, Article 25 of the LATP defines subsidiary protection as a form of protection which the Republic of Serbia grants to an alien who would be subjected, if returned to the country of origin, to torture, inhumane or degrading treatment, or where his/her life, safety or freedom would be threatened by generalized violence caused by external aggression or internal armed conflicts or a massive violation of human rights.

Hence, there are three forms of protection in Serbia: refugee protection, subsidiary protection and temporary protection.<sup>658</sup>

The decision about granting temporary protection is made by the Government in case a massive influx of persons from a country where their life, safety or freedom is threatened by generalized violence, external aggression, internal armed conflicts, massive violation of human rights or other circumstances that have seriously affected public order arrive.<sup>659</sup> Temporary protection is the best option for the state to evoke when it is not possible to carry out individual procedures to grant the right to asylum due to the swift influx of people. Temporary protection shall be accorded in line with the social, economic and other capacities of the Republic of Serbia.<sup>660</sup>

On the other hand, temporary protection is an extraordinary measure and may last for up to one year. If the reasons for providing temporary protection continue to apply then the status may be extended.

Article 22 of the Law on Asylum stipulates that an alien may express his/her intention to seek asylum orally or in writing before a competent MOI officer during a border check when entering the Republic of Serbia, or within its territory in all police directorates in Serbia. Consequently, the competent Aliens Department officers register the expressed intentions of the aliens and issue them certificates thereof.<sup>661</sup>

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Article 2 (4) and (6) of the LATP.

<sup>657</sup> Article 2 of the LA.

Article 2 (4) and (6) of the LATP.

<sup>658</sup> CZA, 2013, p.4.

<sup>659</sup> Article 36 of the Law on Asylum.

<sup>660</sup> Article 36 of the Law on Asylum.

<sup>661</sup> BCHR, 2015, p. 15.

According to the Law on Asylum, the asylum procedure shall be initiated by submitting an asylum application to an authorized officer of the Asylum Office on a prescribed form, within 15 days from the day of registration.<sup>662</sup>

The Asylum Office envisaged under the Law on Asylum was not established by the end of 2014, wherefore the first-instance asylum procedure was conducted by the Asylum Unit within the Aliens Department of the MOI Border Police Directorate.<sup>663</sup>

Namely, the Asylum Unit was the first-instance asylum procedure body, which was in charge of: registration (identification, photographing and fingerprinting), issuance of IDs to asylum seekers and persons granted asylum, filing of oral asylum applications for the record, interviewing asylum seekers, rendering first-instance decisions on asylum applications, approving asylum seekers' accommodation outside asylum centers, rendering decisions terminating refugee protection, setting deadlines within which the aliens are to leave the territory of Serbia, rendering decisions on the asylum seekers' family reunion applications and on applications for travel documents by persons granted asylum.<sup>664</sup>

Appeals of Asylum Unit decisions are reviewed by the Asylum Commission, which consists of nine members appointed by the Government to four-year terms in office.<sup>665</sup> Furthermore, asylum seekers are entitled to file appeals on grounds of 'silence of the administration', in the event the first-instance authority failed to render a ruling within two months from the day the procedure was initiated.<sup>666</sup>

Just seven officers who conduct the asylum procedure staff the Asylum Unit; hence this insufficiency fails to ensure the timely and efficient implementation of the procedure. Moreover, regarding the appointment of the Commission members, the Law on Asylum does not lay down precise criteria.<sup>667</sup>

Eventually, asylum seekers may initiate administrative disputes before the Administrative Court to challenge the final decisions of the Asylum Commission and its failure to rule on their appeals within the legal deadline.<sup>668</sup>

On the other hand, the institution of the Commissariat for Refugees and Migration in the Republic of Serbia (hereinafter Commissariat), a special organization in the public administration system,

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<sup>662</sup> Article 25 of the Law on Asylum.

<sup>663</sup> BCHR, 2015, p. 15.

<sup>664</sup> BCHR, 2015, p. 15.

Strategy CIM p.6.

<sup>665</sup> Article 20 of the Law on Asylum.

<sup>666</sup> BCHR, 2015, p. 15

<sup>667</sup> BCHR, 2015, p. 15.

<sup>668</sup> Article 15 of the General Administrative Procedure Act.

was established for the purpose of performing professional and other activities related to the management of the return and integration of refugees and other affiliated administrative tasks.<sup>669</sup>

While waiting for the final decisions on their applications, asylum seekers are provided with accommodation and basic living conditions in asylum centers operating within the Commissariat.<sup>670</sup> In addition, the Commissariat is in charge of keeping a record of persons accommodated in the centers.<sup>671</sup> The Commissariat is also responsible for the accommodation and integration of persons granted the right to refuge or subsidiary protection, and for proposing integration plans to the RS Government.<sup>672</sup> In 2014, asylum seekers were accommodated in asylum centers in Banja Koviljača, Bogovađa, Obrenovac, Sjenica, Tutin and Krnjača.<sup>673</sup>

On the other hand, Social Work Centers appoint guardians for unaccompanied underage asylum seekers and persons deprived of legal capacity without legal representatives before they apply for asylum.<sup>674</sup> Therefore, the Law on Asylum foresees that guardians must attend the asylum interviews.

Nevertheless, the asylum procedure, rights and obligations of asylum seekers, refugees and people granted subsidiary protection/temporary protection are governed in detail by the 2007 Law on Asylum as well as the 2018 LATP, whereas the General Administrative Procedure Act (GAPA) applies subsidiary in the asylum procedure.<sup>675</sup> In addition, the reviews of claims filed with the Administrative Court are conducted in accordance with the Administrative Dispute Act.

## 1.2. Asylum Procedure

In the Republic of Serbia, the asylum procedure is an administrative, not judicial, process by nature.<sup>676</sup> Additionally, since the adoption of the 2018 LATP, the Law on Asylum represented a single asylum procedure, which was the same for all asylum-seekers regardless of their country of origin or location.<sup>677</sup> In other words, there were no separate accelerated or border procedures.<sup>678</sup> Bearing in mind that the novelties brought up by the LATP have already been discussed, what follows is information on the asylum procedure as governed by the 2007 Law on Asylum. This

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<sup>669</sup> Commissariat for Refugees and Migration, available at <http://www.kirs.gov.rs/articles/aboutus.php?lang=ENG> (last consulted on 10.07.2016).

Action Plan for Chapter 24, p.13.

<sup>670</sup> Article 21 of the Law on Asylum.

<sup>671</sup> Article 64 of the Law on Asylum.

<sup>672</sup> Articles 15 and 16 of the Migration Management Act.

<sup>673</sup> BCHR, 2015, p. 16.

<sup>674</sup> BCHR, 2015, p. 16.

<sup>675</sup> BCHR, 2015, p. 22.

<sup>676</sup> CZA, 2013, p.12.

<sup>677</sup> Aida (b), 2016, p. 12.

<sup>678</sup> Aida (b), 2016, p. 12.

2007 Law continues to apply for those cases that were initiated before the adoption of the new one, unless the latter provides better solutions for the applicant.

Recording an asylum-seeker is not the same as registering them. Under Serbian law, the former entails issuing them a certificate recognizing the expressed intention to seek asylum.<sup>679</sup> Expressing the intention to seek asylum does not constitute the initiation of the asylum procedure.

It is possible in practice for the same person to express the intention to seek asylum more than once under one condition: that his or her asylum application has not been rejected, in which case he or she may lodge a subsequent application.<sup>680</sup> This relates to people whose certificate has expired, has been stolen or lost, persons returned under a readmission agreement from neighboring countries, and/or those who had previously been recorded as asylum seekers etc.<sup>681</sup>

Unaccompanied minors cannot express the intention to seek asylum before a social welfare center appoints a temporary legal guardian.<sup>682</sup> For the number of expressed intentions to seek asylum by asylum seeking minors, please refer to Table No.1.

<b>Unaccompanied Minors /Year</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015 including Jun</b>
<b>Total</b>	501	598	1569	3123
<b>Boys</b>	472	564	1482	2751
<b>Girls</b>	29	34	87	372

**Table No.1** *Annual Number of Unaccompanied Children Expressing the Intention to Seek Asylum*<sup>683</sup>

The main reason for disparity in the number between boys and girls traveling alone is the fact that female children are often themselves reluctant to leave home and family as well as the fact that independent travel for female children is not an acceptable concept in their countries of origin.<sup>684</sup> This is because there are greater chances for girls to end up in the hands of human traffickers and become exposed to sexual exploitation.<sup>685</sup> Male children are more often directly involved in armed conflict, and are thus often targets during combat or can even be exposed to forced recruitment. Furthermore, boys are considered to have greater chances of finding employment in countries of destination and are expected to send money back to their families in order to support them.

As previously mentioned, aliens may express the intention to seek asylum orally or in writing to competent MOI officials at a border checkpoint of the Republic of Serbia or within its territory.<sup>686</sup>

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<sup>679</sup> Article 23(2) of the Law on Asylum.

<sup>680</sup> Aida (b), 2016, p. 13.

<sup>681</sup> Aida (b), 2016, p. 13.

<sup>682</sup> Aida (b), 2016, p.13.

<sup>683</sup> CZA (e), 2015, p.18

Group 484, 2014, p.50.

<sup>684</sup> Women's Refugee Commission, 2016, p.3.

<sup>685</sup> Women's Refugee Commission, 2016, p.3.

<sup>686</sup> BCHR, 2015, p. 23.

They may also express their intention in the so-called no man's land between two states, in airport transit zones and any other places effectively controlled by the authorities of Serbia.<sup>687</sup>

Upon their expression of the intention to seek asylum in the Republic of Serbia, aliens shall be registered and are obliged to report to authorized officers of the Asylum Office or one of the asylum centers within the following 72 hours.<sup>688</sup> Afterwards, they are issued with a certificate certifying they have expressed intention to seek asylum. Its content is specified in the Rulebook on the Content and Design of the Asylum Application Form and Documents Issued to Asylum Seekers or People Granted Asylum or Temporary Protection. According to the Rulebook, one copy of this certificate is given to the alien, one is forwarded to the Asylum Office without delay and the third is stored at the MOI unit that issued it.

According to BCHR many officers of competent bodies considered the asylum applications they were receiving as those coming from asylum seekers who were using Serbia only as a stopover. This assumption may have adversely affected the way in which the asylum procedure was conducted.

Furthermore, aliens who have not been issued certificates on the day of arrival are not admitted in the Asylum Centers, meaning they typically spend the night in open air, usually without any ID documents.<sup>689</sup>

Aliens who are issued certificates are under the obligation to report to an asylum center where they will be accommodated or to the Asylum Office to receive consent to reside at a private address.<sup>690</sup> The Asylum Unit is in charge of registration of aliens once they are admitted to an asylum center or receive approval to reside at a private address. Registration entails establishing the aliens' identity, photographing and fingerprinting them, and any documents that may be relevant to decisions made during the asylum procedure are temporarily seized. Receipts are issued for the seized documents.<sup>691</sup>

In other words, the Asylum Unit allows the registration and submission of asylum applications only to individuals accommodated in the Asylum Centers or who have received consent to rent private accommodation. For those aliens who are forced to live outside because the Asylum Centers lack capacities to take them in, it can be understood that they have been denied the right to access the asylum procedure.<sup>692</sup>

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<sup>687</sup> BCHR, 2015, p. 23.

<sup>688</sup> Article 22 (2) of the Law on Asylum.

<sup>689</sup> BCHR, 2015, p. 26.

<sup>690</sup> BCHR, 2015, p. 28.

<sup>691</sup> BCHR, 2015, p. 28.

<sup>692</sup> BCHR (b), 2016, p.266.

Registered asylum seekers are issued IDs, which are valid for six months and can be extended until the asylum procedure is completed.<sup>693</sup> The Asylum Unit issued 460 IDs in 2014, which indicates that many registered asylum seekers were not issued identity documents.<sup>694</sup>

In the first half of 2015, some 520 aliens were denied access to Serbian territory, among them 18 Syrian and 30 Iraqi nationals.<sup>695</sup> In addition, aliens have encountered problems accessing the asylum procedure when they expressed their intention to seek asylum in police directorates.<sup>696</sup> This can be traced back to the lack of the administrative capacities to issue more than several dozen certificates a day.<sup>697</sup>

The process of application for asylum looks like this: the Asylum Unit officers ask the aliens questions in the application form in the presence of their legal counsels and interpreters and enter their replies into the application form.<sup>698</sup> However, the Asylum Unit received only 388 asylum applications in 2014, i.e. only 2.35 per cent of the aliens who expressed the intention to seek asylum actually applied for asylum (Please refer to the Table No.2 on the number of expressed intentions to seek asylum).<sup>699</sup>

Article 26(4) of the Law on Asylum sets forth that the authorized Asylum Office officers shall endeavor during the interview to establish all the facts of relevance to a decision on an asylum application, and, in particular: the identity of the asylum seeker in question, the grounds on which his/her asylum application is based, the asylum seeker's movement after leaving his/her country of origin, and whether the asylum seeker has previously sought asylum in any other country.

Asylum Seekers/Year	2008	2009	2010	2011	2012	2013 Including May	2014	2015 Including Jun
Total	52	275	522	3134	2723	1591	16.490	577.995
Men	41	253	470	2649	2344	1378	-	-
Women	11	22	52	485	379	213	-	-
Children	2	75	149	722	744	204	2780	8200

**Table No. 2** Annual number of asylum seekers from 2008 to Jun 2015<sup>700</sup>

Furthermore, following the interview of an asylum seeker, the Asylum Unit shall render a decision on the asylum application, either by upholding the application and recognizing the asylum seeker's right to refuge or subsidiary protection, or by rejecting the application in the event that they find the application is ill-founded or that there are reasons for denying the right to asylum.<sup>701</sup>

<sup>693</sup> BCHR, 2015, p. 29.

<sup>694</sup> BCHR, 2015, p. 29.

<sup>695</sup> BCHR (b), 2016, p.265.

<sup>696</sup> BCHR (b), 2016, p.265.

<sup>697</sup> BCHR (b), 2016, p.265.

<sup>698</sup> BCHR, 2015, p. 31.

<sup>699</sup> BCHR, 2015, p. 31.

<sup>700</sup> CZA(b), 2013, p.4 and CZA (e), 2015, p.18

<sup>701</sup> Articles 28 and 29 of the Law on Asylum.

Additionally, it can dismiss an asylum application without ruling on its merits (please refer to Appendix II).<sup>702</sup>

Even though the Law on Asylum does not specify the deadline within which the Asylum Office is to rule on an asylum application, Article 208(2) of the GAPA sets a general 60-day deadline for rulings on administrative matters. However, it often takes the Asylum Office far longer to issue a ruling concerning an asylum application.<sup>703</sup> According to the data indicated by the BCHR, the asylum procedure lasts on average between six and 12 months.

All in all, in 2014 the Asylum Unit rendered six decisions granting asylum, 12 decisions dismissing asylum applications and 325 conclusions discontinuing the procedure because the asylum seekers left the Asylum Centers after they applied for asylum.<sup>704</sup> Moreover, it did not issue any rulings rejecting asylum applications in 2014. By contrast, the Asylum Unit granted subsidiary protection to five applicants and refuge to one asylum seeker in 2014.

The Asylum Unit received only 583 asylum applications in 2015.<sup>705</sup> In particular, there were 30 decisions granting asylum, 25 decisions rejecting the application, 3 decisions dismissing the applications and 550 conclusions discontinuing the procedure because the asylum seekers left the asylum centers or another place of residence after they had applied for asylum.<sup>706</sup>

Ever since the establishment of the Asylum Office in 2008, a total of 48 persons have been granted international protection, with 22 refugee status grants and 26 subsidiary protection grants.<sup>707</sup> In particular, the main nationalities receiving protection are Syria (13 grants), Libya (10 grants) and Ukraine (9 grants).

On the other hand, the Law on Asylum also considers the concepts of safe country of origin and safe third country. The employment of either concept may lead to the asylum application being rejected by the Asylum Office, although the asylum seeker may be able to prove that the country in question is not safe in his or her individual case.<sup>708</sup> A list of safe countries of origin and safe third countries was established by a Governmental Decree in 2009 and has not been revised since.

Regarding the Serbian Government's Decision on the List of Safe Countries of Origin and Safe Third Countries as grounds for dismissing asylum applications of asylum seekers who had transited or directly come from one of the countries designated as safe in the Government Decision, the Asylum Commission has taken the view that Turkey, Greece and Macedonia are safe third countries in which asylum seekers can apply for asylum.<sup>709</sup> However it remains unclear which

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Aida (b), 2016, p. 16.

<sup>702</sup> Article 33 of the Law on Asylum.

<sup>703</sup> Aida (b), 2016, p.16.

<sup>704</sup> BCHR, 2015, p. 32.

<sup>705</sup> Aida (b), 2016, p.15.

<sup>706</sup> Aida (b), 2016, p.16.

<sup>707</sup> Aida (b), 2016, p. 6.

<sup>708</sup> Articles 33(1)(4) and (6) of the Law on Asylum.

<sup>709</sup> BCHR, 2015, p. 34.



documents the Asylum Commission referred to when it qualified Turkey, Greece and Macedonia as safe third countries. There is no specified reasoning provided for this decision.

Furthermore, according to the Asylum Commission, the Asylum Unit is not obliged to establish whether the states from which the asylum seekers came to Serbia would let them back into their territory and provide them with access to the asylum procedure.<sup>710</sup> This renders them even more vulnerable to a possible chain of refoulment.

In practice, even the Administrative Court has been automatically applying the concept of safe third country in spite of the fact that it had not first been established whether the third countries were actually safe for the asylum-seekers *in casu*.<sup>711</sup>

Finally, troublesome could be the practice of issuing *certificates for migrants coming from countries where their lives are in danger*. Namely, the Ministry of the Interior started issuing these documents in September of 2015 to persons transiting through Serbia who were assumed not willing to stay. Troublesome is, at minimum, the assumption itself, and, furthermore, the fact that it gives its bearers the right to legally remain in Serbia, accommodated at an asylum center and access medical services, for only 72 hours.<sup>712</sup> During this time the bearer is expected to leave Serbia.<sup>713</sup> Additionally, particularly disturbing is the possibility that these persons will not be admitted to Croatia due to the closing of the Balkan route.

### 1.3. Accommodation and Transit

There are several facilities for accommodating asylum seekers in Serbia. In 2018, asylum seekers were accommodated in the following centers: Banja Koviljača, Bogovađa, Sjenica, Tutin, and Krnjača, which all operate under the jurisdiction of the Commissariat for Refugees and Migrations and are funded from the state budget.<sup>714</sup> According to UNHCR information, these five centers have capacity to accommodate 810 persons.

If the center's accommodation capacities are maximized, the Center is under no obligation to accept and accommodate newcomers.<sup>715</sup> Asylum seekers accommodated in asylum centers have the freedom of movement and can leave the Centre whenever they wish. However, if they do not come back after 24 hours, their place can be given to someone else.

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UNHCR, 2012, p. 13, para 37.

<sup>710</sup> BCHR, 2015, p. 36.

<sup>711</sup> Aida (b), 2016, p.19.

<sup>712</sup> Aida (b), 2016, p.14.

<sup>713</sup> Aida (b), 2016, p.14.

<sup>714</sup> BCHR, 2018, pp.73-77.

<sup>715</sup> Rules on housing conditions and ensuring basic living conditions in the center for asylum Art. 2.

Due to the growing number of newcomers, the government opened a Reception Centre in Preševo in July 2015. Here, refugees could register and receive basic humanitarian aid.<sup>716</sup> However, many of the refugees complained that they had not been provided with enough food and that they had to wait in line for hours before they were registered at this reception center. Apart from the Preševo Centre, Serbian authorities opened temporary reception centers also at Miratovac, close to the FYROM border, Kanjiža and Subotica (near the Hungarian border), and subsequently in Adaševci, Šid and Principovac (near the Croatian border). Despite these new centers, refugees could only register at the Preševo Centre.<sup>717</sup>

The asylum seeker's route led the way from Preševo to Belgrade before Hungary closed its borders. They would then take the bus to Kanjiža or Subotica. Usually, asylum seekers would remain on Serbian territory no longer than three days, which equals the duration of the certificate they were given upon their registration. In a sense, asylum-seekers considered the certificate as a sort of temporary or transit visa.

When Hungary closed its border in October 2015, asylum-seekers started using Bapska, an old border crossing between Serbia and Croatia that was, up until 2015, no longer in use.<sup>718</sup> Serbian police officers are occasionally present, but they do not conduct border check ups. Croatian police officers, however, do patrol the line of demarcation.

Approximately twenty buses arrive per day, carrying people from the border with the Former Yugoslav Republic of Macedonia (FYROM); the majority of the passengers are nationals of Afghanistan, Iraq, and Syria.<sup>719</sup> Buses with various license plates such as Bujanovac (BU), Niš (NI), Leskovac (LE), Šid (SI), Pozarevac (PO), Beograd (BG), etc. take them from Preševo to Bapska (approx. 500 km). Upon arrival, a spokesperson enters the bus and informs them about the route. From the license plates to the spokesperson, these signs point to just how organized transportation of asylum seekers is. Afterwards, Czech volunteers form groups of about forty people and let them head towards the Croatian border, which is approximately 100 meters walking distance following the path next to the cornfield.

Necessary pauses of about fifteen minutes between the group crossings are made, which leaves time to freshen up on the Serbian side of the border, and to pick up some warm clothes, medicines, and refreshments. These items are prepared by volunteers and international humanitarian organizations, such as the Red Cross, UNHCR Serbia, Médecins Sans Frontières, World Vision International, Women and Health Alliance International, Ecumenical Humanitarian Organization, and Samaritan's Purse. However, this fifteen-minute pause also leaves enough of time for Croatian police officers to make records of people who have arrived.

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<sup>716</sup> BCHR (b), 2016, p.261.

<sup>717</sup> BCHR (b), 2016, p.262.

<sup>718</sup> Joksic, 2015, p. 1.

<sup>719</sup> CZA (d), 2013, p.19.

However, following the trend of closing the borders, Slovenia, Croatia, Serbia and FYROM decided to limit access to their territories in mid-November 2015. They agree that only refugees coming from Iraq, Syria and Afghanistan, or, in other words, war torn areas, should be granted status. Even though ombudspersons from those respective states have pointed out that this constituted a breach of international refugee law and international human rights law, the practice of limiting access to the asylum procedure proceeded.

Furthermore, the Republic of Serbia has established Asylum Shelters. The competent MOI authority shall issue rulings ordering the placement of aliens who cannot be expelled forcibly, whose identity has not been established, who do not have travel documents and in other cases prescribed by the law in the Aliens Shelter (hereinafter: Shelter) under enhanced police supervision.<sup>720</sup>

During its visit to the Aliens Shelter in 2014, the National Preventive Mechanism against torture established that the aliens and the Shelter staff communicated solely in English, and that the House Rules, which were visibly displayed in the common rooms, were translated into English, French, Russian and Arabic.<sup>721</sup> However, the factsheet on the aliens' rights, which the Shelter management has allegedly handed out to all aliens, was available only in English translation and did not specify that they were entitled to seek asylum in Serbia.

## 2. Integration

The Law on Asylum prescribes the general obligation of the Republic of Serbia to ensure conditions for the integration of refugees in social, cultural and economic life and facilitate the naturalization of refugees proportionate to its capacities.<sup>722</sup> In addition, the Migration Management Act sets forth that the Commissariat is in charge of accommodation and integration of people granted asylum or subsidiary protection.<sup>723</sup> However, the latter law does not include separate provisions on the integration of persons granted subsidiary protection apart from prescribing that they shall be provided with temporary housing.<sup>724</sup>

Moreover, the Migration Management Act foresaw that the Government of the Republic of Serbia shall adopt an integration plan proposed by the Commissariat within twelve months from the day the Act came into force, which was in November 2012.<sup>725</sup> However, such a plan has to date not been adopted.

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<sup>720</sup> Article 49 of the Law on Asylum.

BCHR, 2015, p. 26.

<sup>721</sup> BCHR, 2015, p. 26.

<sup>722</sup> Article 46 of the Law on Asylum.

<sup>723</sup> Articles 15 and 16 of the Migration Management Act.

<sup>724</sup> Article 15(1) of the Migration Management Act.

<sup>725</sup> Articles 16 and 21 of the Migration Management Act.

The UN Committee on Economic, Social and Cultural rights expressed concern that refugees and internally displaced persons did not have access to comprehensive integration programmes in areas such as education, social assistance, language and vocational trainings and housing.<sup>726</sup>

Eventually, the Asylum Info Centre was established in August 2015 in Nemanjina Str. 3 in order to streamline efforts to assist persons in need of international protection and address the lack of quality information about their rights in the Republic of Serbia.<sup>727</sup> These include their right to seek asylum, which was identified as one of the main problems faced by the vast majority of refugees passing through or staying in Serbia.<sup>728</sup> Apart from that, the Asylum Info Centre was opened near the Belgrade main bus and railway stations, which was a strategically chosen location, because these informal venues are where most of the refugees had been rallying. Staff of the Asylum Info Centre were trained to provide refugees with accurate information.

## 2.1. Enjoyment of Rights

Aliens granted asylum in the Republic of Serbia are still unable to exercise a number of rights enshrined in the Geneva Refugee Convention and the Asylum Act (Arts. 39–50), including the right to residence in the Republic of Serbia, the rights to accommodation, health care, free primary and secondary education, social welfare, family reunification, etc.<sup>729</sup> Moreover, even the negligible number of successful asylum-seekers who remained in Serbia, encountered difficulties in exercising these rights, especially the right to administrative assistance and travel documents, which are guaranteed by Articles 25 and 28 of the Geneva Refugee Convention.<sup>730</sup>

Additionally, certain rights have been granted only to aliens who have been given refugee protection. Hence, the right to work, permanent residence, movable and immovable property, networking, entrepreneurship, intellectual property, free access to courts, legal aid, exemption from costs and expenses, as well as the right to freedom of religion, are not mentioned in the scope of persons under subsidiary protection.<sup>731</sup> This was improved by the new 2018 LATP, in which new legislation provides for the equalization of these two categories, as already discussed.

Article 38 of the Law on Asylum sets forth the rights of aliens who have been granted temporary protection. These being the right: to residence during the period of the validity of temporary protection; to a personal document confirming his/her status and residence right; to health care, in accordance with the regulations governing health care for aliens; to free primary and secondary education in public schools, in accordance with special regulation; to legal aid, under the conditions prescribed for asylum seekers; to freedom of religion, under the same conditions that apply to citizens of the Republic of Serbia; to accommodation, in accordance with a special regulation; to

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<sup>726</sup> UN Committee on ECS, p.5 para14.

<sup>727</sup> BCHR (b), 2016, p.262.

<sup>728</sup> BCHR (b), 2016, p.262.

<sup>729</sup> BCHR (b), 2016, p.271.

<sup>730</sup> BCHR (b), 2016, p.271.

<sup>731</sup> CZA, 2013, p.9.

affordable accommodation, in the case of handicapped persons (please refer to articles 42 and 43 LA).

It should be noted that foreigners are afforded equal rights to those citizens of Serbia enjoy, especially regarding human rights concepts and the prohibition of discrimination. On the other hand, their obligation is to obey the domestic legal system and decisions of executive power.<sup>732</sup>

## 2.2.Minors

According to Article 2 of the Law on Asylum, Serbia defines an unaccompanied minor who is a foreigner who has not yet reached eighteen years of age and who, at the time of entry into the Republic of Serbia or upon having entered it, is not accompanied by their parents or guardians.

During their stay in Serbia, asylum-seeking minors are accommodated in asylum centers Banja Koviljača, Bogovađa, Krnjača, Sjenica and Tutin together with adult asylum seekers, regardless of whether they are accompanied in their travel by a parent or guardian or not.<sup>733</sup> However, unaccompanied asylum-seeking minors are initially placed in one of two work units for foreign minors without parents or guardians that operate under the auspices of the Institute for Children and Youth in Belgrade and the Institute for Youth Education in Nis. After a certain period of time, they are transferred to one of the previously mentioned centers for asylum.

Furthermore, because the decision to form the Centre for Accommodation of Underage Aliens Unaccompanied by Parents or Custodians was made, budget resources have never been allocated for its opening, equipment and work, nor is the center allowed to open new jobs.<sup>734</sup>

Eventually, in 2018 the CRM started accommodating UASMs in a special organizational unit in the Asylum Centre “PIM” Krnjača, where they are separate from other asylum-seekers.<sup>735</sup> UASMs were accommodated in six separate buildings that had 60 to 70 beds each in November 2018.<sup>736</sup> Within the compound of the Asylum Centre Krnjača, there is no permanent presence of guardianship authorities ensured in the Asylum Centre Krnjača.<sup>737</sup> Social workers come only when informed by CRM that UASMs have arrived into the center.<sup>738</sup>

In addition, and with UNHCR support, an operational unit of the Child Home “Jovan Jovanović Zmaj” was adapted for accommodation of UASMs in October 2018.<sup>739</sup> Additionally, the Home for

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<sup>732</sup> CZA (c), 2013, p.4.

<sup>733</sup> CZA (e), 2015, p.20.

<sup>734</sup> Group 484 (b), 2014, p.5.

<sup>735</sup> BCHR, 2018, p. 62.

<sup>736</sup> BCHR, 2018, p. 62.

<sup>737</sup> BCHR, 2018, p. 62.

<sup>738</sup> BCHR, 2018, p. 62.

<sup>739</sup> BCHR, 2018, p. 63.

Children and Youth with Developmental Problems “Kolevka” in Subotica, which has a UASMs reception unit, did not accommodate any children from this category in 2018.<sup>740</sup>

A specialized foster accommodation also exists as a form of alternative care of UASMs. Starting in 2016, the process continued throughout the following years.<sup>741</sup> Even though a relatively low number of ASMs are accommodated in foster families, this form of child care proved to be very successful.<sup>742</sup> Hence, awareness raising activities and training of as many foster families as possible should continue.<sup>743</sup>

Only four children were accommodated in foster families in the territory within the competence of the Centre for Family Accommodation and Adoption Belgrade, whereas 29 foster families were trained to care for UASC in the first six months of 2018.<sup>744</sup> In particular, these UASMs were all male, and they ranged from infants to 15-year-olds.<sup>745</sup> Most of the UASMs originated from Afghanistan, Pakistan and Syria.<sup>746</sup> In addition, the average length of their stay was four months, though one UASM remained with the foster family more than 18 months.<sup>747</sup>

In the first half of 2018, there were no UASMs accommodated with foster families on the territory within the competence of the Centre for Family Accommodation and Adoption Novi Sad, though three foster families registered with the institution and trained to take care of UASCs.<sup>748</sup> Similarly, with all due respect to the territory within the competence of the Centre for Family Accommodation and Adoption Niš, there were no trained foster families who could take care of UASMs, which meant no UASMs were accommodated by foster families.<sup>749</sup>

Identification of unaccompanied minors typically happens on the spot by officials, most often police officers, and this also establishes first contact with potential asylum seekers.<sup>750</sup> In addition, there is no proper or developed method for ascertaining the asylum seekers’ age, meaning that the asylum seeker’s word and the official’s personal observations are the only criteria for identifying minors in the greatest number of cases.<sup>751</sup>

The law is very precise stating that all unaccompanied minors must be awarded a legal guardian by the local social welfare center immediately.<sup>752</sup> The guardian must be present during the

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<sup>740</sup> BCHR, 2018, p. 63.

<sup>741</sup> BCHR, 2018, p. 65.

<sup>742</sup> BCHR, 2018, p. 65.

<sup>743</sup> BCHR, 2018, p. 65.

<sup>744</sup> BCHR, 2018, p. 65.

<sup>745</sup> BCHR, 2018, p. 65.

<sup>746</sup> BCHR, 2018, p. 65.

<sup>747</sup> BCHR, 2018, p. 65.

<sup>748</sup> BCHR, 2018, p. 65.

<sup>749</sup> BCHR, 2018, p. 65.

<sup>750</sup> Aida (b), 2016, p. 22.

<sup>751</sup> Aida (b), 2016, p. 22.

<sup>752</sup> Article 16 of the Law on Asylum.

hearing.<sup>753</sup> Unfortunately, this is questionable, since the legal guardian merely assumes care for the minor in a formal way, sometimes without ever meeting the child.<sup>754</sup> The minor is then put in a minors' center under provisional care for the duration of the asylum procedure.

Eventually, article 41 of the Law on Asylum stipulates that an asylum-seeker and a person who has been granted asylum shall have the right to free primary and secondary education and the right to welfare benefits, in accordance with special regulation.

### 2.3.The Right to Education

The right to education is a basic human right, and all children have the right to equal and fair treatment in their enjoyment of the right to education.<sup>755</sup> Hence all children in Serbia, including children of so-called *irregular migrants*, asylum-seeking minors and children who are granted asylum in Serbia, are entitled to free primary education.<sup>756</sup>

To put things differently, the right to education of children in the Republic of Serbia is realized in accordance with international treaties, the Constitution and its laws. All stakeholders in the education system are obliged to respect these laws and to ensure their implementation, and, in case of violations of the right to education, protection may be requested from the relevant state authorities.

Foreign nationals and stateless persons have the right to education under the same conditions and in the manner prescribed for the citizens of the Republic of Serbia (Art. 6 LBES). In addition, the Law on Asylum provides that an asylum-seeker and a person granted asylum have the right to free primary and secondary education (Art. 41 LA).

Parents or guardians of an asylum-seeking minor are required, according to the LBES, to enroll children between the ages of five and a half and six and a half years in a preschool program in order to attend preparatory classes for primary school.<sup>757</sup> All children from vulnerable groups have priority and will be first enrolled in a preschool chosen by their parents.

Furthermore, since asylum-seeking minors represent a vulnerable social group, they can enroll in primary schools under facilitating circumstances.<sup>758</sup> Therefore, their registration requires neither complete documentation nor proof of residence of their parents. It must be remembered, too, that the school is obliged to enroll every child who has a permanent residence within the territory of the school.

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<sup>753</sup> Article 16 of the Law on Asylum.

<sup>754</sup> Aida (b), 2016, p.22.

<sup>755</sup> UDHR, Articles 7 and 26.

LBES, Art. 6.

<sup>756</sup> CRC, Art. 28, and Law on Ratification of CRC.

<sup>757</sup> CZA (e), 2015, p.38.

<sup>758</sup> CZA (e), 2015, p.38.

If the educational institution does not enroll the child in a preschool or elementary school in order to attend a pre-school program, or the institution does not enroll a child who is a resident in the territory of a particular elementary school, it may be punished with a fine of 30,000 to 500,000 RSD. Additionally, a fine of 5,000 to 50,000 RSD for these offenses shall be imposed on the director, or the person in charge of the educational institution.<sup>759</sup>

For any ASM older than seven and a half years who has not completed the first grade of elementary school, a team of elementary school teachers, pedagogues and psychologists can evaluate the ASM and place them in the appropriate grade.

Minors may not know the language in which lectures are carried out in schools in the new country they are seeking asylum in. In this case, the law stipulates that the school shall organize a way for the student to learn the language. This may include preparation of language classes and taking additional classes (Art. 100 LBES).

Eventually, Article 38 of the Law on Secondary Education sets forth that a foreign high school student should apply for recognition of certificates acquired in their country of origin, which is followed by the decision of the competent Ministry on its recognition. During the decision-making process on recognition of testimonies, the student who has submitted the request may be conditionally registered and enabled to attend high school. However, it should be borne in mind that asylum seekers who are persecuted in their country of origin cannot be expected to contact the authorities of the country of origin to obtain any papers and documents, and that Countries Signatories of Refugee Convention have an obligation to facilitate enjoyment of the rights of asylum-seekers.

In general, the Serbian education system requires students to complete one compulsory year of a preparatory preschool program, eight years of compulsory primary school, and four years of high school.

In detail, Serbia's education system consists of four levels of education. In particular: preschool, primary, secondary and higher education.<sup>760</sup> Since primary education lasts for eight years, it is divided into eight obligatory grades. All children have the right to attend primary school and they spend around four to seven hours in school per day.<sup>761</sup>

The first four years of primary education are devoted to development of basic knowledge and skills. Children learn to read, write, and learn languages (including English), literature, arts, music,

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<sup>759</sup> CZA, 2013, p.38

<sup>760</sup> The Brochure developed within the project "Support to education of migrant children/ refugees in the Republic of Serbia", implemented by UNICEF and Centre for Education Policy, with support of Ministry of Education, Science and Technological Development of the Republic of Serbia.

<sup>761</sup> Ibid.



mathematics and the basics of the world around us.<sup>762</sup> Starting from fifth grade, children also begin to learn about natural and social sciences such as physics, chemistry, biology, geography and history.<sup>763</sup> Additional extra-curricular activities children can participate in become available, as well.<sup>764</sup> At the end of primary education, pupils have to pass the final exam, which qualifies them for entrance into secondary education.<sup>765</sup>

Secondary education can last for two, three or four years, depending on the type of school the student attends. They may attend a general secondary school (gymnasiums), a vocational schools, or an art school.<sup>766</sup> Even though secondary education is not obligatory, almost all children in Serbia attend it.<sup>767</sup> Children enter secondary education at the age of 15 and spend six hours per day in school.<sup>768</sup> The general high school offers four-year programmes which are focused on social and natural sciences, whereas secondary vocational schools offer education programmes that can last either two, three or four years, and prepare students for work and/or further education.<sup>769</sup> “In vocational schools, children get educated in fields of construction, mechanical engineering, agriculture, forestry, chemistry, medicine, dentistry, economy, catering, trade etc. Art schools last for four years and offer programmes in the fields of music, visual arts and ballet. At the end of secondary education (four-year programmes) students pass the final exam.”<sup>770</sup> Eventually, each child that enters schools in Serbia will receive proof of attendance, which schools will typically issue in the form of a confirmation document for each child in the English language.<sup>771</sup>

Because every child in Serbia has a right to education, this means that every child, irrespective of the country of origin, can enter schools in Serbia and access formal education, as any Serbian citizen is able to.<sup>772</sup>

The primary school “Mile Dubljević” from Lajkovac was the first to enroll two asylum-seeking minors in January 2013.<sup>773</sup> However, ASMs have lectures in a separate class of this school in Bogovađa. Their enrollment in the school was set-up with assistance from the Centre for the Protection and Assistance to Asylum Seekers.

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<sup>762</sup> Ibid.

<sup>763</sup> The Brochure developed within the project “Support to education of migrant children/ refugees in the Republic of Serbia”, implemented by UNICEF and Centre for Education Policy, with support of Ministry of Education, Science and Technological Development of the Republic of Serbia.

<sup>764</sup> Ibid.

<sup>765</sup> Ibid.

<sup>766</sup> Ibid.

<sup>767</sup> Ibid.

<sup>768</sup> Ibid.

<sup>769</sup> Ibid.

<sup>770</sup> Ibid.

<sup>771</sup> Ibid.

<sup>772</sup> Ibid.

<sup>773</sup> CZA, 2013, p.38.

The enrollment of a larger number of ASMs is complicated by a number of problems. The first is the language barrier. Because ASMs usually do not have sufficient knowledge of the Serbian language, which is what the classes are taught in, they are unable to participate. Preparatory and/or supplementary language classes should be easier to access for ASMs to fully enjoy their right to education. Additionally, the short duration that ASMs remain in one center aggravates their access to this right. Because they are so mobile, it is difficult for them to fully commit to one school system.

### 3. Asylum in Practice: Year 2018

During 2018 there was a large increase in applications of asylum-seekers originating from Iran arrived in Serbia. This increase was a result from the unilateral introduction of a visa-free regime for nationals of that country.<sup>774</sup> Most of the activities carried out by state authorities concerning refugees continue to be directed primarily towards humanitarian aid and housing, while systematic solutions and clear migration policies have not been established.<sup>775</sup> The new 2018 Asylum Law and Temporary Protection introduced a new category of temporary residence on humanitarian grounds that would allow vulnerable categories to legalize their stay even when they did not realize the right to asylum.<sup>776</sup>

Another difference is that until the 3<sup>rd</sup> of June 2018, when the Law on Asylum and Temporary Protection came into effect, the competent authority recorded foreigners who wished to apply for asylum in the Republic of Serbia, and issued certificates on expressed intention to seek asylum to them in line with the 2007 Asylum Law. Since LATP came into effect, these persons who express interest in applying for asylum are registered using the same procedure, whereby they are issued certificates on registration of foreigners who have expressed intention to seek asylum in the Republic of Serbia.<sup>777</sup>

There have been 7,651 persons who expressed intention to seek asylum and to submit an asylum application in the Republic of Serbia during 2018.<sup>778</sup> This shows further increase relative to 2017 when there were 5,702 persons intending to seek asylum and who were registered in the same period.<sup>779</sup> The noticed increase in the number of applications is a result of the decision of the Government of the Republic of Serbia to abolish visas for the nationals of the Islamic Republic of Iran and the Republic of India. This policy came into effect on the 2<sup>nd</sup> of September 2017 and

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<sup>774</sup> Azil.rs available at <http://azil.rs/pravo-na-azil-u-republici-srbiji-2018/> (last consulted on 23.04.2019).

<sup>775</sup> Ibid.

<sup>776</sup> Ibid.

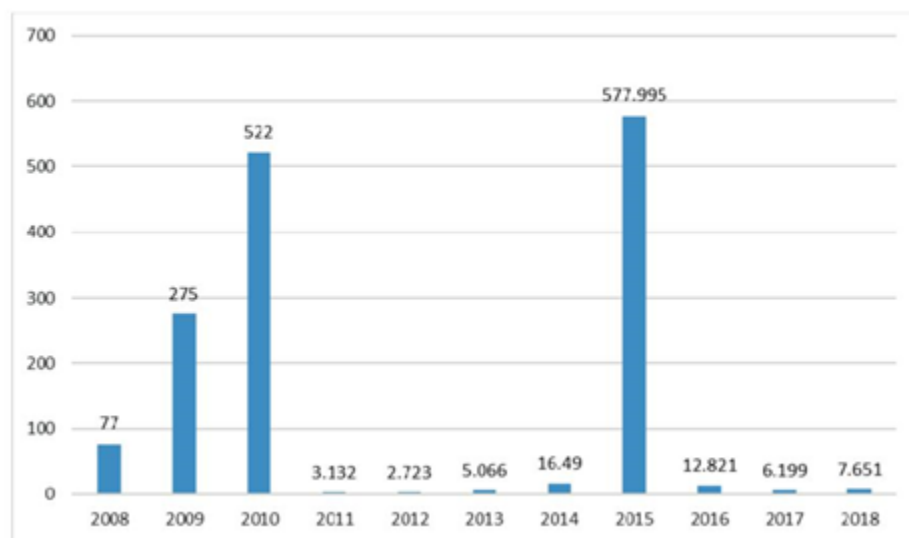
<sup>777</sup> BCHR, 2018, p. 13.

<sup>778</sup> BCHR, 2018, p. 13.

<sup>779</sup> BCHR, 2018, p. 13.

therefore significantly increased the number of persons from these countries who applied for asylum in Serbia.<sup>780</sup>

Statistical data breakdown shows that among the number of persons who expressed intention to seek asylum and to submit an asylum application in Serbia in 2018, 6,776 were men and 875 were women.<sup>781</sup> Out of the total number, 2,200 were minors, 666 of whom were unaccompanied and separated children.<sup>782</sup> With respect to the country of origin, the majority of unaccompanied and separated children arrived from Afghanistan (541), Pakistan (73) and Iran (18).<sup>783</sup> The same trend continued following the outbreak of the so-called refugee crisis.



**Graph No.1:** Number of expressed intentions to seek asylum, i.e., intentions to submit asylum applications since the establishment of the national asylum system from 2008, to 2018<sup>784</sup>

In general, most of the applications or expressed intentions to seek asylum i.e. to submit an asylum application in Serbia in 2018 were submitted by nationals of Afghanistan (2,270), followed by Pakistan (1,786), Iran (1,587), Iraq (656) and Syria (382).<sup>785</sup>

These were followed by applications of the nationals whose countries of origin were Bangladesh (209), India (183), Libya (144), Palestine (86), Somalia (70), Algiers (41), Tunisia (29), Morocco (25), Ghana (18), Sri Lanka (18), Turkey (18), Lebanon (13), Nepal (12), Eritrea (11), Russia (10), Cameroon (9), Nigeria (9), Yemen (7), Guinea (5), Democratic Republic of Congo (4) and Mali (4), Albania (3), Bulgaria (3), Egypt (3), China (3), Kuwait (3), FYRO Macedonia (2), Burundi

<sup>780</sup> BCHR, 2018, p. 22.

<sup>781</sup> BCHR, 2018, p. 13.

<sup>782</sup> BCHR, 2018, p. 13.

<sup>783</sup> BCHR, 2018, p. 13.

<sup>784</sup> BCHR, 2018, p. 14.

<sup>785</sup> BCHR, 2018, p. 14.

(2), Israel (2), Kazakhstan (2), Myanmar (2), Cote d'Ivoire (2), Vietnam (2), Austria (1), BiH (1), Montenegro (1), Gabon (1), Greece (1), Holland (1), Croatia (1), Jordan (1), Qatar (1), Cuba (1), Liberia (1), Peru (1), Romania (1), Sudan (1), Ukraine (1) and Zimbabwe (1).

In the period from the 1<sup>st</sup> of January to 30<sup>th</sup> of November 2018, 292 persons submitted asylum applications.<sup>786</sup> The majority of the applications were submitted by nationals of Iran (159), followed by Afghanistan (27), Pakistan (25) and Iraq (18).<sup>787</sup>

Therefore, the Asylum Office interviewed 151 people in the asylum procedure during the same period, out of which only 24 asylum applications were upheld, 38 applications for 45 persons were dismissed on merits and 20 asylum applications for 21 persons were rejected.<sup>788</sup> In addition, the procedures were suspended in 126 cases for 176 persons, most often because the asylum-seekers had left Serbia or the place of residence in the meantime.<sup>789</sup>

With respect to the 24 applications that were upheld, refugee status was granted in ten cases, and subsidiary protection was granted in 14 cases.<sup>790</sup> To be more precise, refugee status was granted to nationals of Afghanistan (5) and Iran (5), whereas subsidiary protection was granted to the nationals of Libya (10), Bangladesh (1), Pakistan (1), Syria (1) and Somalia (1).<sup>791</sup>

On the other hand, most applications dismissed on merit were submitted by nationals of Pakistan (14) and Ghana (7), and the majority of those rejected had been filed by nationals of Afghanistan (6) and Pakistan (5).<sup>792</sup> Even one decade after the national asylum system has been established, between 2008 and up until the end of November 2018, the Asylum Office has granted refugee status to only 54 persons and subsidiary protection to 74 persons.<sup>793</sup>

New legal standards adopted on asylum in 2018 are aligned with the Convention Relating to the Status of Refugees and other international conventions, respecting the right to access the asylum procedure with full respect for the principle of *non-refoulement*.<sup>794</sup>

Namely, the Law on Asylum and Temporary Protection (LATP) provides that once inside the territory of Serbia, foreigners have the right to express intention to seek asylum and submit asylum applications pursuant to the law.<sup>795</sup> As the previous asylum law foresaw, the same procedure regarding expressing the intention to seek asylum applies now. That is, foreigners may express intention to seek asylum to authorized MOI police officers at Serbia's borders or inside its territory

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<sup>786</sup> BCHR, 2018, p.14.

<sup>787</sup> BCHR, 2018, p.15.

<sup>788</sup> BCHR, 2018, p.15.

<sup>789</sup> BCHR, 2018, p.15.

<sup>790</sup> BCHR, 2018, p.15.

<sup>791</sup> BCHR, 2018, p.15.

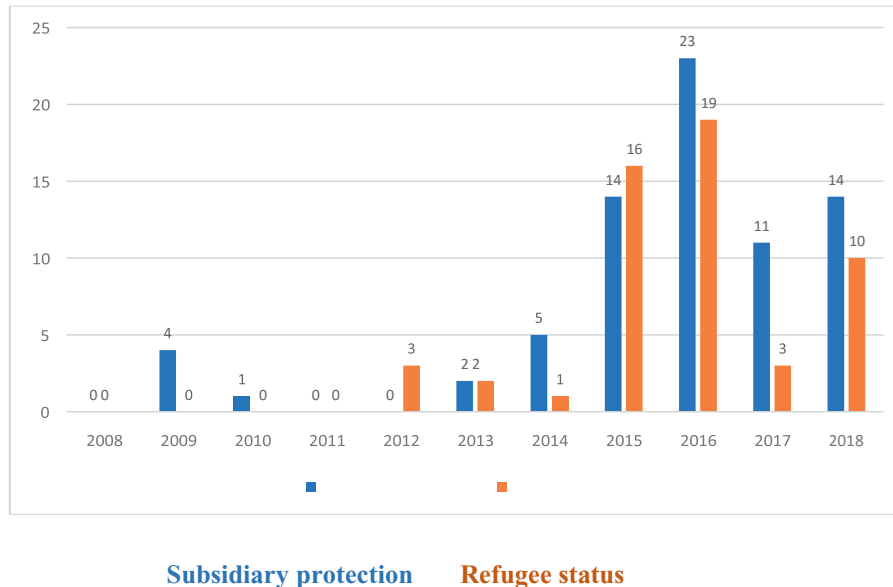
<sup>792</sup> BCHR, 2018, p.15.

<sup>793</sup> BCHR, 2018, p.15.

<sup>794</sup> BCHR, 2018, p. 19.

<sup>795</sup> BCHR, 2018, p. 19.

either verbally or in writing.<sup>796</sup> Once they have expressed their interest, they are registered and referred to asylum centers or other facilities designated for accommodation of asylum-seekers, to which they have to report within 72 hours from the moment of issuance of the registration certificate.<sup>797</sup>



**Graph No. 2** – Showing results in granting protection one decade since the establishment of asylum system<sup>798</sup>

Even though the law provides for material reception conditions in asylum centers or other facilities designated for accommodation of asylum-seekers (and only for asylum-seekers), until the completion of the asylum-procedure, foreigners who did not express the intention or did not have the intention to seek asylum in Serbia were placed in asylum centers and other facilities designated for accommodation of asylum-seekers in 2018.<sup>799</sup> Hence, all foreigners who express the intention to seek asylum, irrespective of their financial status, have the right to stay in the centers.<sup>800</sup>

Article 50 of the LATP stipulates that the applicants staying in the reception centers shall have the right to material reception conditions including accommodation, food, clothing and cash allowance.<sup>801</sup> A new solution introduced by the LATP is the possibility of providing a cash allowance for personal needs.<sup>802</sup> In particular, the amount of cash allowance for personal needs shall be equal to the amount of allowance received by adult social welfare beneficiaries with no income, accommodated in social welfare institutions, in accordance with the regulations governing social welfare. It would be provided for a maximum of four members of the applicant's family

<sup>796</sup> BCHR, 2018, p. 19.

<sup>797</sup> BCHR, 2018, p. 19.

<sup>798</sup> BCHR, 2018, p. 17.

<sup>799</sup> BCHR, 2018, p. 67.

<sup>800</sup> BCHR, 2018, p. 67.

<sup>801</sup> BCHR, 2018, p. 68.

<sup>802</sup> BCHR, 2018, p. 68.

household, including the applicant.<sup>803</sup> The amount of social assistance for the month of April 2019 amounted to 8,283 RSD or 69,8 EUR per person.<sup>804</sup>

Persons who expressed the intention to seek asylum are also entitled to social assistance.<sup>805</sup> The rulebook on social assistance for asylum-seekers and persons granted asylum designates that social assistance takes the form of a monthly cash allowance provided that the person is not accommodated in an asylum center and that he/she and the members of his/her family have no other income, or that this income is below the legally prescribed threshold for establishment of the amount of social allowance.<sup>806</sup>

As previously mentioned the allowance amount of 8,283 RSD may be granted to an adult applicant here on the occasion of social assistance, whereas each adult family member may receive an additional 4,142 RSD, and a minor may receive a maximum of 2,485 RSD per month.<sup>807</sup> Furthermore, the decision about the request to exercise the right to monthly allowance is made by a social welfare center in the municipality of residence of that person and the request is to be supplemented by the ID of an asylum-seeker or a person granted asylum and other supporting evidence.<sup>808</sup> In addition, the procedure itself is governed by GAPA provisions and the conditions for exercise of the right to monthly allowance are reviewed, ex officio, once a year.<sup>809</sup>

### **Freedom of Movement**

From the moment the asylum-seeker has been admitted to the asylum center or other facility designated for accommodation, he/she has the right to stay in the Republic of Serbia and move freely within Serbian territory provided there are no reasons for movement restriction.<sup>810</sup> However, there are certain time restrictions connected to the House Rules in reception centers. One needs to note that these centers are locked from 10 p.m. in winter/11 p.m. in summer to 6 a.m. the following day, which is also known as “quiet time.”<sup>811</sup>

Moreover, every night before the center is locked, the Commissariat for Refugees and Migration (CRM) staff visits the applicants’ rooms to verify their presence and identify potential unauthorized absences.<sup>812</sup> Therefore, the applicants that are found to be absent without permission from a center

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<sup>803</sup> BCHR, 2018, p. 68.

<sup>804</sup> Ministry of Labour, available at <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva/resenje/2018/31/1/reg> (last consulted on 23.04.2019).

<sup>805</sup> BCHR, 2018, p. 68.

<sup>806</sup> BCHR, 2018, p. 68.

<sup>807</sup> BCHR, 2018, p. 69.

<sup>808</sup> BCHR, 2018, p. 69.

<sup>809</sup> BCHR, 2018, p. 69.

<sup>810</sup> BCHR, 2018, p. 69.

<sup>811</sup> BCHR, 2018, p. 69.

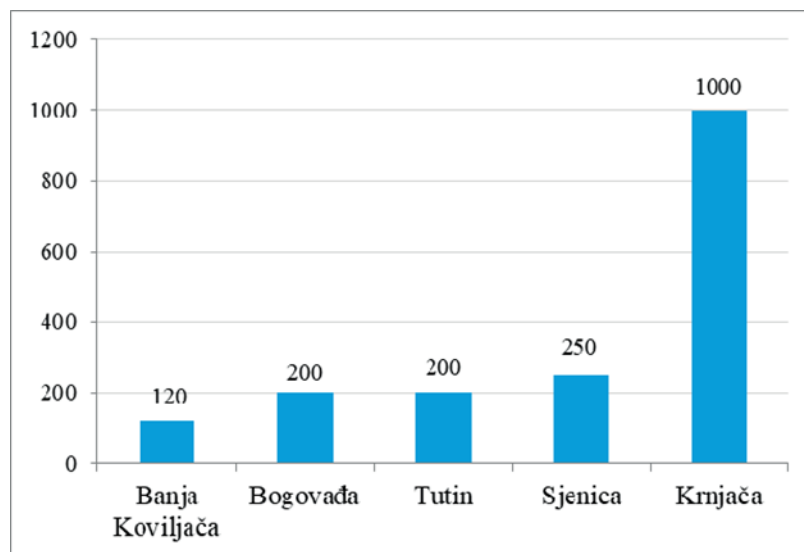
<sup>812</sup> BCHR, 2018, p. 69.

at the time of its locking, run the risk of having their asylum procedure suspended in accordance with LATP provisions.<sup>813</sup>

### Types of Accommodation

With respect to the accommodation, the foreigners who express intention to seek asylum have the right to stay in one of the five permanent asylum centers, or one of 14 reception/transit centers (RTC), which were established in 2015.<sup>814</sup> Asylum seekers may also stay in one of the centers that were established as a form of a humanitarian action, which was taken because of the increased number of refugees and migrants choosing to stay within the Serbian territory.<sup>815</sup>

However, the RTCs in Preševo, Bela Palanka, Divljana and Dimitrovgrad were put on a temporary stand-by because of the drop in the number of refugees and migrants, and with a view to the rationalization of the RTC network and cost optimization before the impending heating season and the winter.<sup>816</sup> On the other hand, RTCs can be operational again within a matter of several hours should the number of refugees and migrants rise and occasion call for it.<sup>817</sup> For instance, the RTC in Šid was temporarily closed in May 2017, however it was reopened in early December 2018.<sup>818</sup>



**Graph No. 3 Shows Asylum Center's' Capacity (total 1770)<sup>819</sup>**

<sup>813</sup> BCHR, 2018, p. 69.

<sup>814</sup> BCHR, 2018, p. 70.

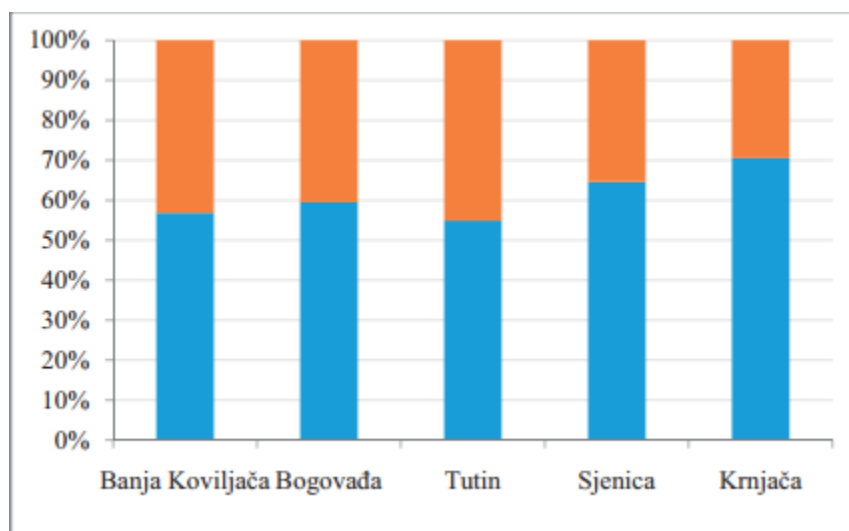
<sup>815</sup> BCHR, 2018, p. 70.

<sup>816</sup> BCHR, 2018, p. 70.

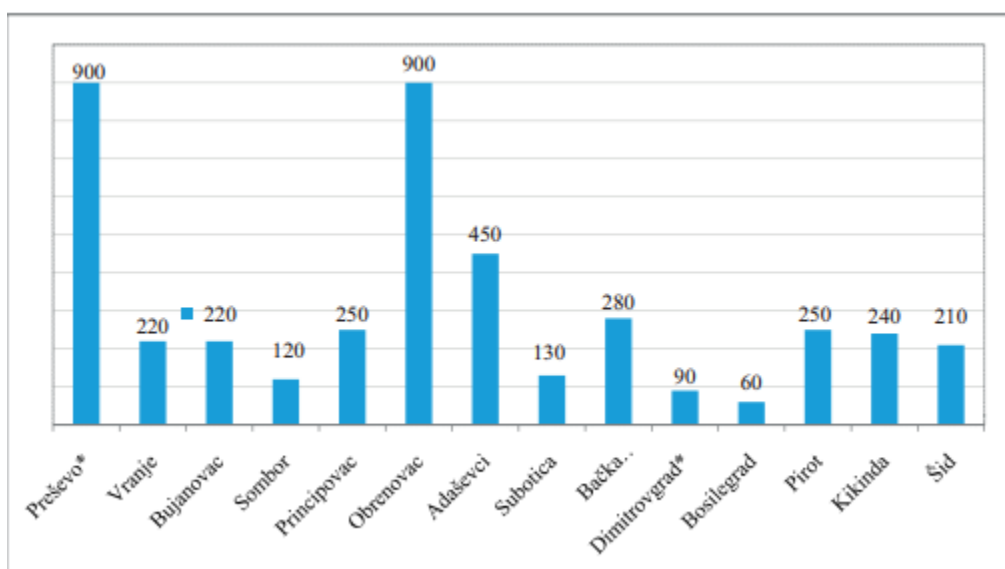
<sup>817</sup> BCHR, 2018, p. 70.

<sup>818</sup> BCHR, 2018, p. 70.

<sup>819</sup> BCHR, 2018, p. 71.



**Graph No.4** Shows occupancy in Asylum Centers in November 2018 (total 945 persons accommodated)<sup>820</sup>

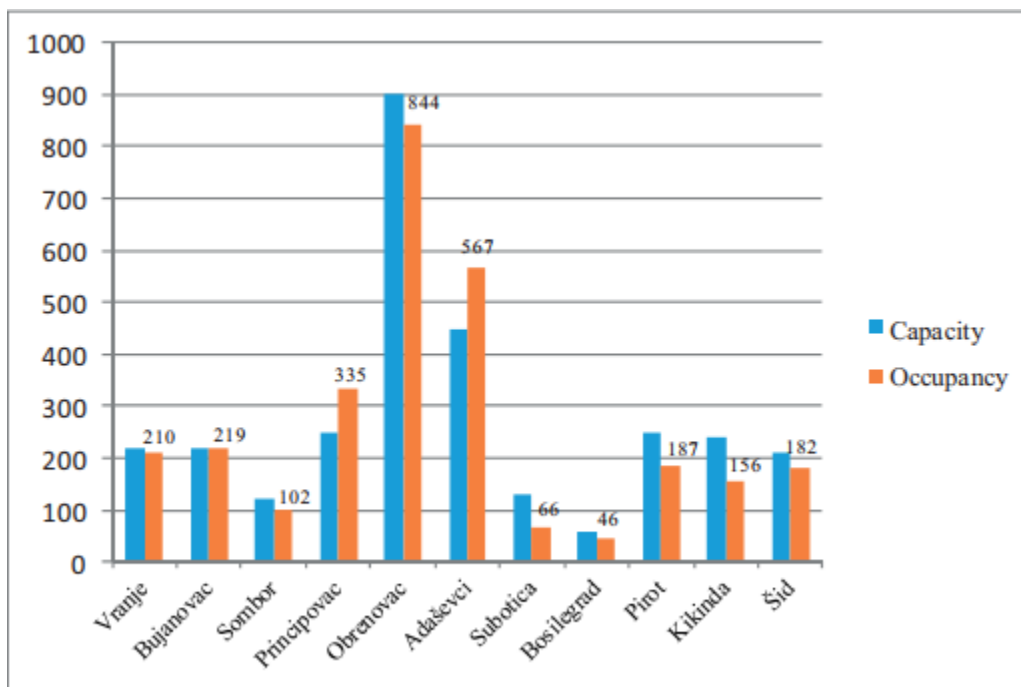


**Graph No. 5.** Shows capacity of Reception/Transit Centers (total 4.110)<sup>821</sup>

<sup>820</sup> BCHR, 2018, p. 71.

<sup>821</sup> BCHR, 2018, p. 72.





**Graph No. 6** Shows occupancy in Reception/Transit Centers in November 2018 (total 2.914 persons)<sup>822</sup>

Regarding the conditions of accommodation in asylum centers and RTC, they differ considerably.<sup>823</sup> It appears that conditions are the best in the asylum centers in Banja Koviljača and Bogovađa.<sup>824</sup> According to the data provided by the Commissariat for Refugees and Migration, the RTCs in Adaševci and Principovac were overcrowded in November 2018; they were operating at 126 per cent and 134 per cent capacity respectively.<sup>825</sup>

As a general rule, special attention is devoted when accommodating families. They are to be placed in a separate premises or detached facilities within the centers, collectively or individually, depending on the capacities of the particular center.<sup>826</sup> Therefore, families in the RTC in Adaševci are accommodated together in rub halls installed as a provisional solution for accommodation of a higher number of persons in need of accommodation, whereas in RTC in Principovac, all families reside on one floor; and in RTC in Sombor, they have been placed in a separate building within the compound.<sup>827</sup>

However, the issue of privacy is compromised in all RTC, no matter if families are accommodated in dormitories, be it within the compounds or in rub halls in the courtyards.<sup>828</sup> Beds placed next to

<sup>822</sup> BCHR, 2018, p. 72.

<sup>823</sup> BCHR, 2018, p. 73.

<sup>824</sup> BCHR, 2018, p. 73.

<sup>825</sup> BCHR, 2018, p. 73.

<sup>826</sup> BCHR, 2018, p. 73.

<sup>827</sup> BCHR, 2018, p. 73.

<sup>828</sup> BCHR, 2018, p. 73.

each other and the lack of any solid physical barriers leave little privacy. It is not uncommon for families who reside in them to use blankets or large sheets to separate the space they sleep in from others.<sup>829</sup>

The Special Representative on Migration and Refugees of the Council of Europe, Tomáš Boček, expressed concern over the lack of privacy during his recent visit to Serbia. He was especially concerned about families living in these conditions for several months and for not being separated from single men.<sup>830</sup> The only center that had a separate building for unaccompanied and separated minors appears to be the asylum center in Krnjača.<sup>831</sup> Nevertheless, according to the report of Special Representative on Migration and Refugees of Council of Europe Mr. Boček, these ASMs were at risk of violence and other forms of abuse even in this center, due to an inadequate number of security staff.<sup>832</sup>

Consequently, the CRM staff decided in November 2018 to move all the UASMs from the other centers to the asylum center in Sjenica in order to ensure their safety.<sup>833</sup> Even though material conditions in this center were improved and the center itself was recently renovated, the disadvantage is that the majority of organizations providing humanitarian and legal aid are based in Belgrade and not in Sjenica, which is a several-hours drive from the capital.<sup>834</sup>

Several problems emerged in practice during the first three months of the LATP implementation. One was that some persons issued registration certificates were referred to centers that had no vacant places.<sup>835</sup> Consequently, these persons were informally redirected to other centers for accommodation of asylum-seekers, which meant there was an absence of any official decision signed and stamped by authorized officials of the CRM and Asylum Office. Officials were also not properly informed, as well.<sup>836</sup> This meant that a number of asylum-seekers ended up in a disadvantageous situation in that those who had been issued registration certificates failed to report to the centers designated on the certificate within 72 hours.<sup>837</sup>

#### **4. Safe Country of Origin and Safe Third Country Concepts**

Both the safe country of origin and the safe third country concepts are recognized by Serbian Asylum Law. Consequently, the application of either concept may lead to the asylum application being rejected by the Asylum Office, although the asylum seeker may be able to prove that the country in question is not safe in his or her individual case.<sup>838</sup> A list of safe countries of origin and

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<sup>829</sup> BCHR, 2018, p. 73.

<sup>830</sup> BCHR, 2018, p. 73.

<sup>831</sup> BCHR, 2018, p. 73.

<sup>832</sup> BCHR, 2018, p. 73.

<sup>833</sup> BCHR, 2018, p. 73.

<sup>834</sup> BCHR, 2018, p. 73.

<sup>835</sup> BCHR, 2018, p. 74.

<sup>836</sup> BCHR, 2018, p. 74.

<sup>837</sup> BCHR, 2018, p. 74.

<sup>838</sup> Aida (b), 2016, p.23.

safe third countries was established by Governmental Decree in 2009 (Official Gazette RS, br. 67/2009) and has not been revised since. Please refer to the Table below.

Safe Country of Origin	Safe Third Country
1) Federal Republic of Austria	1) Federal Republic of Austria
2) Kingdom of Belgium	2) Kingdom of Belgium
3) Republic of Bulgaria	3) Republic of Bulgaria
4) Republic of Cyprus	4) Republic of Cyprus
5) Czech Republic	5) Czech Republic
6) Kingdom of Denmark	6) Kingdom of Denmark
7) Republic of Estonia	7) Republic of Estonia
8) Republic of Finland	8) Republic of Finland
9) Republic of France	9) Republic of France
10) Federal Republic of Germany	10) Federal Republic of Germany
11) Republic Greece	11) Republic Greece
12) Republic of Hungary	12) Republic of Hungary
13) Republic of Ireland	13) Republic of Ireland
14) Republic of Italy	14) Republic of Italy
15) Republic of Latvia	15) Republic of Latvia
16) Republic of Lithuania	16) Republic of Lithuania
17) Great Duchy of Luxembourg	17) Grand Duchy of Luxembourg
18) Republic of Malta	18) Republic of Malta
19) Kingdom of the Netherlands	19) Kingdom of the Netherlands
20) Republic Poland	20) Republic Poland
21) Republic of Portugal	21) Republic of Portugal
22) Romania	22) Romania
23) The Republic of Slovakia	23) The Republic of Slovakia
24) Republic of Slovenia	24) Republic of Slovenia
25) Kingdom of Spain	25) Kingdom of Spain
26) Kingdom of Sweden	26) Kingdom of Sweden
27) United Kingdom	27) United Kingdom
28) Republic of Bosnia and Herzegovina	28) Republic of Bosnia and Herzegovina
29) Republic Croatia	29) Republic of Croatia
30) Republic of Macedonia	30) Republic of Macedonia
31) Republic of Montenegro	31) Republic of Montenegro
32) Kingdom of Norway	32) Kingdom of Norway
33) Republic of Iceland	33) Republic of Iceland
34) Principality of Liechtenstein	34) Principality of Liechtenstein
35) Swiss Confederation	35) Swiss Confederation

36) Principality of Monaco	36) Principality of Monaco
37) Russian Federation	37) Commonwealth Australia
38) Republic Belarus	38) New Zealand
39) Commonwealth Australia	39) Japan
40) New Zealand	40) Canada
41) Japan	41) United States
42) Canada	42) Republic of Turkey
43) United States	
44) Republic of Argentina	
45) Republic of Paraguay	
46) Eastern Republic of Uruguay	
47) Republic of Chile	
48) Republic of Costa Rica	
49) United States of America	
50) Seychelles Islands	
51) Republic of Mauritius	
52) Republic of Kenya	
53) Republic of Tunisia	
54) Republic of Turkey	

**Table No 3.** *Safe Country of Origin and Safe Third Country List*

Under Serbian Asylum Law, **a safe third country** shall be understood to mean a country from a list established by the Government, which observes international principles pertaining to the protection of refugees in the 1951 Convention on the Status of Refugees and the 1967 Protocol on the Status of Refugees.<sup>839</sup> The safe third country is one in which an asylum seeker had resided, or through which he/she had passed immediately before they arrived in the territory of the Republic of Serbia and where they had an opportunity to submit an asylum application.<sup>840</sup> It is also a country where they would not be subjected to persecution, torture, inhuman or degrading treatment, or where the asylum seeker risks being sent back to a country where their life, safety or freedom would be threatened.<sup>841</sup>

Asylum Law defines **a safe country of origin** as well. It shall be understood to mean a country from a list established by the Government whose national an asylum seeker is, and if the person concerned is stateless, a country where that person had previous habitual residence, which has ratified and applies international treaties on human rights and fundamental freedoms.<sup>842</sup> Additionally, the safe country of origin is one where there is no danger of persecution for any reason which constitutes grounds for the recognition of the right to refuge or for granting subsidiary

<sup>839</sup> BCHR (a), 2014, p.75.

<sup>840</sup> BCHR (a), 2014, p.75.

<sup>841</sup> BCHR (a), 2014, p.75.

<sup>842</sup> Article 2 Asylum Law.

Aida (b), 2016, p. 23.

protection, whose citizens do not leave their country for those reasons, and which allows international bodies to monitor the observance of human rights.<sup>843</sup>

Hence, the practice of the Serbian asylum authorities shows that they are automatically applying the safe third country concept, which resulted in granting international protection to only eight persons in the first five years of implementation of the 2008 Law on Asylum.<sup>844</sup>

“In 2015 the Asylum Office maintained the practice of application of the safe third country concept dismissing 25 asylum applications submitted by the nationals of Russia (8), Ukraine (5), Syria (4), Sudan (3), Somalia (2), Cameroon (1), Ghana (1) and Morocco (1). This practice persisted in 2016 also, and most of the asylum applications of persons who entered Serbia from FYROM and Bulgaria were dismissed on the basis of Article 33(1. 6) of the Law on Asylum. In 2016, the Asylum Office dismissed 53 asylum applications concerning 65 asylum-seekers. In other words, the Asylum Office dismissed applications in 54 per cent of the procedures it ruled on in 2016. These applications had been filed by nationals of Pakistan (14), Iraq (10), Russia (9), Syria (7), Libya (5), Afghanistan (5), Bangladesh (3), FYROM (3), Sudan (2), Cuba (2), Somalia (1), Bosnia and Herzegovina (1), Bulgaria (1), Algiers and one stateless person. The safe third country concept was applied in more than 95 per cent of the cases. In most of them, the Asylum Office referred to the 2009 Decision of the Government of Serbia on establishment of the list of safe countries of origin and safe third countries. In 2017 again, the asylum applications were most often dismissed (excluding the decisions on suspension of the asylum procedure) on the basis of Art. 33 (1.6). The Office dismissed asylum applications in 69 per cent of the cases (concerning 56 persons), finding that procedural requirements for review of the merits had not been fulfilled. These applications had been filed by nationals of Afghanistan (16), Iraq (9), Russia (4), Pakistan (4), Cuba (3), Iran (2), Syria (2), and FYROM (2), one by the nationals of each: the USA, China, Bulgaria, Mexico, Turkey, Guinea, Ghana, Cameroon, Nigeria, Croatia, and two stateless persons.”<sup>845</sup>

It is important to point to the practice of the ECtHR, which has established the standard that states had to be aware of the deficiencies of the asylum procedures in other countries and could not simply presume that they would treat asylum-seekers in accordance with the Refugee Convention standards and that they had to ascertain how the authorities of particular states enforced asylum regulations in practice.<sup>846</sup> To put things differently, the Asylum Office and the Commission in most of their decisions merely noted that the countries the asylum-seekers had transited on their way to Serbia were safe because they were listed in the 2009 Government Decision, hence practically failing to examine whether these countries fulfilled other relevant criteria.<sup>847</sup>

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<sup>843</sup> Article 2 Asylum Law.

Aida (b), 2016, p. 23.

<sup>844</sup> BCHR (d), 2018, p.55.

<sup>845</sup> BCHR (d), 2018, p. 56.

<sup>846</sup> BCHR (d), 2018, p. 57.

<sup>847</sup> BCHR (d), 2018, p. 57.

“The case of H.M. from Syria whose asylum application was dismissed in 2017 is the best example of the practice of automatic application of the safe third country concept, and it also confirms the findings of the ECtHR in the case of Ilias and Ahmed v. Hungary on the risks from refoulement into Serbia and chain refoulement to FYROM and to Greece. The application was dismissed because both the Asylum Commission and the Administrative Court took the view that FYROM may be considered a safe country of asylum in the above described way, i.e. ignoring a whole set of reports of the UN treaty bodies, UNHCR, Amnesty International and Human Rights Watch.”<sup>848</sup>

Bearing in mind the afore-mentioned, all relevant international bodies such as UN Human Rights Committee, UN Committee for the Rights of the Child, UN Committee for Elimination of Racial Discrimination, and the Human Rights Council in Universal Periodic Review, assessed the asylum system in Serbia and found it to be problematic in 2017, since it was primarily based on the automatic application of the safe third country concept.<sup>849</sup>

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<sup>848</sup> BCHR (d), 2018, p. 61.

<sup>849</sup> BCHR (d), 2018, p. 63.

## Chapter IV

This Chapter deals with the socio-economic, cultural and political conditions in the country in order to try to provide answer to the research question on how domestic social conditions affect schooling of ASMs. The second part provides in-depth information on these particular rights being exercised by persons granted asylum or subsidiary protection in order to provide the greater picture of why ASMs may perceive Serbia as a transit country.

### 1. Social, cultural, economic and political conditions in Serbia

In 2018, Serbia's political life was characterised by topics that have dominated its public discourse and greatly affected its endeavours to join the European Union for years. These include the normalisation of relations between Belgrade and Priština, EU accession, definition of national foreign policy, regional cooperation as well as how to tackle the so-called refugee crisis, and other inner issues such as a potential parliamentary election (which is due in 2020 unless an early call takes place), large macroeconomic imbalances, such as high and variable inflation, unemployment, an unstable exchange rate, low rate of economic growth, brain drain, health protection, education system improvements, etc.<sup>850</sup> The beginning of 2019 was marked by political protest, wherein opposition demanded freedom of the media as a precondition to an early call for parliamentary elections.

Providing a more general overview, there are 7,001,444 people living in Serbia according to the Statistical Office of the Republic of Serbia.<sup>851</sup> The main method used in calculation of the population is the *population census*, which has been used since 1834 when the first census was carried out.<sup>852</sup> The population census takes place every ten years; the last census took place in 2011. The rate of population growth in 2017 compared to the previous year was negative and amounted to -5,3 per 1,000 inhabitants.<sup>853</sup>

The average life expectancy has extended the last ten years by two years for both sexes, i.e. from 70,7 years to 73 years for men and from 76,2 to 77,9 years for women.<sup>854</sup>

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<sup>850</sup> BCHR (c), 2018, p.23.

Dr. Popovic, Introduction.

<sup>851</sup> Statistical Office of the Republic of Serbia (a), available at <http://www.stat.gov.rs/en-us/> (consulted on 23.02.2019)

<sup>852</sup> Statistical Office of the Republic of Serbia (b), 2018, p.25.

<sup>853</sup> Statistical Office of the Republic of Serbia (b), 2018, p.25.

<sup>854</sup> Statistical Office of the Republic of Serbia (b), 2018, p.25.

Furthermore, average gross salaries and wages calculated for November 2018 amounted to 590 EUR, whereas average net salaries and wages amounted to 426 EUR.<sup>855</sup> However, median net salaries and wages for November 2018 amounted to 334 EUR.<sup>856</sup>

When it comes to unemployment, there was a decrease in the youth unemployment rate in Serbia from 27,5 percent in the second quarter of 2018 to 25,3 percent in the third quarter.<sup>857</sup> According to Trade Economics, the youth unemployment rate in Serbia averaged 40,87 percent from 2008 until 2018, reaching its peak of 54,2 per cent in the second quarter of 2014 and a record low of 25,3 percent in the third quarter of 2018.<sup>858</sup>

On the other hand, the unemployment rate in Serbia decreased to 11,3 per cent in the third quarter of 2018 from 11,9 percent in the second quarter of 2018.<sup>859</sup> It averaged 17,31 per cent from 2008 until 2018, reaching its peak of 25,5 per cent in the first quarter of 2012 and a record low of 11,3 per cent in the third quarter of 2018.<sup>860</sup>

In 2018, industrial production in the Republic of Serbia was greater by 1,3 per cent as compared to 2017.<sup>861</sup> In particular, the manufacturing section increased by 1,9 per cent, electricity, gas, steam and air conditioning supply increased by 1,2 percent, and mining and quarrying fell by 4,8 per cent.<sup>862</sup> Furthermore, in 2018, real GDP increased by 3,5 per cent, in comparison to the previous year.<sup>863</sup>

The internal dialogue on the Kosovo issue still leads to political tensions. The dialogue is often criticized for the absence of a platform for discussion and lack of information about the content of the negotiations in Brussels and the promises the Serbian delegation makes during them.<sup>864</sup> However, in 2018, the EU-facilitated dialogue came to cease due to relations between Belgrade and Pristina worsening. In particular, the “de-recognition” of Kosovo’s independence, and the blocking of Kosovo’s membership in different international organisations, including into UNESCO and INTERPOL, Kosovo imposed a 100 per cent tariff on Serbian (and Bosnian) goods.<sup>865</sup> According to Serbian authorities, a number of countries have “de-recognised” Kosovo’s independence, including Liberia, Solomon Islands, Suriname, Madagascar, Sao Tome and Principe, Guinea Bissau, Burundi, Grenada, Commonwealth Dominica, Papua New Guinea,

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<sup>855</sup> Statistical Office of the Republic of Serbia (c), 2018, p. 1.

<sup>856</sup> Statistical Office of the Republic of Serbia (c), 2018, p. 1.

<sup>857</sup> Trading Economics, Serbia Youth Unemployment Rate, available at <https://tradingeconomics.com/serbia/youth-unemployment-rate> (consulted on 23.02.2019).

<sup>858</sup> Ibid.

<sup>859</sup> Ibid.

<sup>860</sup> Ibid.

<sup>861</sup> Statistical Office of the Republic of Serbia (d), available at <http://publikacije.stat.gov.rs/G2019/pdfE/G20191022.pdf> (consulted on 23.02.2019)

<sup>862</sup> Ibid.

<sup>863</sup> Statistical Office of the Republic of Serbia (a), available at <http://www.stat.gov.rs/en-us/> (consulted on 23.02.2019).

<sup>864</sup> BCHR (c), 2018, p. 23.

<sup>865</sup> See <https://www.euractiv.com/section/future-eu/opinion/eu-must-bring-serbia-and-kosovo-back-to-the-table/>



Lesotho, Union of the Comoros, Palau.<sup>866</sup> Therefore, dialogue on the normalisation between the two respective sides has been interrupted.

In addition, Serbia demands the establishment of the Association/Community of Serb Municipalities in Kosovo as agreed upon in the 2013 Brussels Agreement. They also require the lifting of the 100 per cent newly imposed tariffs. Kosovo continues to demand Serbia's full recognition of their independence, and they require Serbia stop blocking Kosovo from joining international organisations. With regard to "de-recognition" and why it matters, it is impossible to imagine that all countries will change their decision on the matter, but, nevertheless, Serbian Prime Minister, Ivica Dačić, considers de-recognition as an argument and foundation for further negotiations.<sup>867</sup> Furthermore, when the 'importance' of the countries that de-recognised Kosovo comes to the question, Serbian authorities point out, that all countries count the same when it comes to voting in international organisations, hence there cannot be important and not important countries, but only equals. In other words, if the less than half of the members of the UN have recognized Kosovo, which is actually the goal of Serbia's lobby, that is to be an incentive for compromise and dialogue, since it brings the balance back, according to Prime Minister Dačić. Eventually, there is the lack of transparency on how the whole process of de-recognition was triggered. In the sense, if there were briefcases filled with money changing hands or any other promises and arrangements, as once was speculated when the so-called 'unimportant, small island countries with troubled economies' were recognising Kosovo's independence.

Furthermore, regional cooperation is another crucial part of EU accession for both Serbia and other Balkan countries. In particular, EU officials have for several years now insisted on this issue and launched the Berlin Process, which aims to improve regional cooperation and bilateral relations between countries in the region.<sup>868</sup> However, Serbia's relations with its neighboring countries remained burdened by a number of outstanding issues, such as determination of borders, succession, minorities, missing persons, confrontation with the past, and the disintegration processes in some Balkan countries, etc.<sup>869</sup> Therefore, the past two years were marked by ups and downs in regional relations and generated tensions qualified by some international circles as extremely dangerous to fragile regional stability, especially if one takes in consideration of the recent civil war in the 1990s.<sup>870</sup>

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<sup>866</sup> See <https://www.blic.rs/vesti/politika/pet-zemalja-je-povuklo-priznanje-kosova-ali-nije-sve-islo-tako-glatko/4d3rt32>

See <http://www.rts.rs/page/stories/sr/story/9/politika/3393407/palau-preispituje-priznanje-nezavisnosti-kosova.html>

See <https://www.telegraf.rs/vesti/politika/3005633-jos-jedna-zemlja-povlaci-priznanje-kosova-dacic-danas-ocekuje-dobre-vesti-od-10-prijateljske-drzave>

<sup>867</sup> See <http://www.rts.rs/page/stories/sr/story/9/politika/3393407/palau-preispituje-priznanje-nezavisnosti-kosova.html>

<sup>868</sup> BCHR (c), 2018, p. 24.

<sup>869</sup> BCHR (c), 2018, p. 24.

<sup>870</sup> BCHR (c), 2018, p.24.

Regarding the capacity of the pro-EU and democratic opposition parties, unfortunately these movements been extremely weakened by being exposed to continuously public attacks on them. These attacks are on everything from their leaders to party activities, the lack of an open public dialogue, increasingly strong political pressures on the media, independent regulatory authorities, and the judiciary.<sup>871</sup>

When it comes to EU accession, the Stabilisation and Association Agreement with the EU came into effect in September 2013.<sup>872</sup> In 2017, political leaders vowed daily that accession was crucial to Serbia. However, due to the slow implementation of the action plans adopted to fulfil the accession requirements, these vows were not received as genuine.<sup>873</sup> In particular, EU officials have consistently reiterated that the fulfilment of requirements of Chapter 23 on Judiciary and Fundamental Rights and Chapter 24 on Justice, Freedom and Security, were crucial to the assessment of Serbia's readiness to join the EU. Unfortunately, many of the tasks and activities defined in the two Action Plans were not fulfilled by the set deadlines.<sup>874</sup>

Serbia's status in the EU accession process requires further harmonisation of national legislation with EU standards or regulations, principles and provisions of the Convention on the Rights of the Child and other international documents and, above all, their full implementation, which also refers to exercising children's rights.<sup>875</sup> For instance, Serbia has signed but still did not ratify the 2003 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. This particular international legal standard is of significance since it sets forth in Article 30 "Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned."

Serbia has opened twelve chapters on its EU accession path. In particular: Chapter 5 public procurement; Chapter 6 company law; Chapter 7 intellectual property law; Chapter 20 enterprise and industrial policy; Chapter 23 judiciary and fundamental rights; Chapter 24 justice, freedom, security; Chapter 25 science and research; Chapter 26 education and culture; Chapter 29 customs union; Chapter 30 external relations; Chapter 32 financial control; Chapter 35 other issues / normalisation of relations between Serbia and Kosovo), two of which have been provisionally closed (Chapters 25 and 26).<sup>876</sup> In addition, Serbia tabled its negotiating positions on chapters 9, 13, 33, 17 and 18 and was also invited to the table its negotiating positions on chapters 2, 4, 10, 14, 21, 27 and 28.<sup>877</sup>

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<sup>871</sup> BCHR (c), 2018, p. 25.

<sup>872</sup> Committee on the Rights of the Child (d), 2016, para 4.

<sup>873</sup> BCHR (c), 2018, p. 26.

<sup>874</sup> BCHR (c), 2018, p. 26.

<sup>875</sup> Committee on the Rights of the Child (d), 2016, para 4.

<sup>876</sup> European Commission (d), 2018, Anex I.

<sup>877</sup> European Commission (d), 2018, Anex I.

The improvement of human rights protection in Serbia in 2018 was negligible.<sup>878</sup> In particular, war crimes prosecutions in domestic courts progressed slowly, lacked necessary political support, and the asylum system remained flawed.<sup>879</sup> Freedom in media remained troubled and challenged; in particular, pro-government media overtook independent outlets and journalists.<sup>880</sup> Namely, during the period of time from January to mid-August, the Independent Journalists' Association of Serbia (NUNS) registered 50 incidents of violence, threats or intimidation against journalists, including four physical attacks and 18 cases of intimidation of journalists by state officials.<sup>881</sup>

Even though there was a commission established to investigate the murders of three prominent journalists, Dada Vujasinović in 1994, Slavko Ćuruvija in 1999, and Milan Pantić in 2001, progress still has not been made despite it being years later in 2018.<sup>882</sup> In December 2018, the attacks on the person and property of journalists persisted, since the house of journalist Milan Jovanović was set on fire. Even though the executors and the person who ordered the attack were imprisoned, the remaining issue was that the mind behind the operation was a municipality official who allegedly did not like information about his dealings with robbers and mafia published. Therefore, the freedom of expression represents “a matter of increasing concern.”<sup>883</sup>

The appointment of Ana Brnabić, the first lesbian Prime Minister in Serbia, could be praised in terms of improvement of position of LGBTI population. However, authorities failed to protect LGBTI individuals and organizations from discrimination, threats and physical attacks.<sup>884</sup> Hence, in April 2018, the UN Human Rights Committee urged Serbia to implement hate crime legislation effectively, and to introduce a procedure for legal gender recognition compatible with international standards.<sup>885</sup>

On the other hand, economic development in need of enhancement, productivity and economic growth are all primary challenges before the Serbian Government if it is to improve the environment for doing business and to attract foreign investments.<sup>886</sup> In order to fulfil these goals, genuine economic reforms are needed, especially of public companies that have been generating losses for years, and a reform of the state administration is needed in order to improve its efficiency.<sup>887</sup> Similarly, IMF-led assessments suggested that public company reform had to be a

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<sup>878</sup> Human Rights Watch, available at <https://www.hrw.org/world-report/2019/country-chapters/serbia/kosovo> (last consulted on 15.08.2019).

Amnesty International, available at <https://www.amnesty.org/en/countries/europe-and-central-asia/serbia/report-serbia/> (last consulted on 15.08.2019).

<sup>879</sup> Human Rights Watch, available at <https://www.hrw.org/world-report/2019/country-chapters/serbia/kosovo> (last consulted on 15.08.2019).

<sup>880</sup> Ibid.

<sup>881</sup> Ibid.

<sup>882</sup> Ibid.

<sup>883</sup> Ibid.

<sup>884</sup> Amnesty International, available at <https://www.amnesty.org/en/countries/europe-and-central-asia/serbia/report-serbia/> (last consulted on 15.08.2019)

<sup>885</sup> Ibid.

<sup>886</sup> BCHR, (c), 2018, p. 27.

<sup>887</sup> BCHR, (c), 2018, p. 27.

clear priority if Serbia wanted to make greater progress in terms of macroeconomic performance indicators and successfully complete the reforms.<sup>888</sup>

Devastated industry, economic activity and high unemployment rates were the result of incorrect privatization and wrong neoliberal economic policy that has been implemented since 2000 in Serbia.<sup>889</sup> “Today, the state is expected to engage all available capacity in the areas of institution building, as well as the areas of monetary and fiscal policy to create and implement economic and development policies in order to foster socio-economic development.”<sup>890</sup>

Furthermore, data on poverty show that Serbia has the highest rates of people at risk of poverty and social exclusion in all European countries in which these indicators are measured.<sup>891</sup> The absolute poverty rate has also been quite high, exceeding 7 per cent for several years now.<sup>892</sup> Poverty and risks of poverty and social exclusion are extremely widespread among the Roma population, especially in informal Roma settlements.<sup>893</sup> Furthermore, Roma suffer from widespread discrimination and exclusion, forced eviction, de facto housing and educational segregation.<sup>894</sup> The coverage by education of the Roma population is much smaller, they have greater difficulty accessing social services, their children’s nutrition is poorer than that of other children in Serbia and their development is said to be slower.<sup>895</sup> Another issue that targets the Roma population are offences motivated by hatred, often extreme enough to qualify as hate crimes.<sup>896</sup>

Around half a million of Serbia’s citizens were unable to meet their basic subsistence needs, and there is a real risk of stabilisation of the poverty reproduction mechanism. Some indicators of this risk is that data indicate lower enrolment of children from disadvantaged families in primary schools, many of the children who do enrol do not complete primary school, and hardly any of those who do pursue secondary education.<sup>897</sup>

Several other factors attribute to Serbia’s lack of growth. The position of women in Serbia’s society remains problematic. Of particular concern is that the woman’s place in society is marked by male domination and economic dependence on male family members. Corruption has corroded Serbian society, as well.<sup>898</sup> Moreover, politics dominates almost every domain of life in Serbia, of particular concern is that it has become impossible to find employment unless someone belongs to the ruling

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<sup>888</sup> BCHR (c), 2018, p. 27.

<sup>889</sup> Toskovic and others, 2016, p.217.

<sup>890</sup> Toskovic and others, 2016, p.217.

<sup>891</sup> BCHR (c), 2018, p. 28.

<sup>892</sup> BCHR (c), 2018, p. 28.

<sup>893</sup> BCHR (c), 2018, p. 28.

<sup>894</sup> Human Rights Committee, 2017, para 14.

<sup>895</sup> BCHR (c), 2018, p. 28.

<sup>896</sup> Human Rights Committee, 2017, para 10.

<sup>897</sup> BCHR (c), 2018, p. 28.

<sup>898</sup> BCHR (c), 2018, p. 28.

party. Similarly, the election of the important position of the Protector of Citizens was heavily influenced by politics.

Shifting the focus back to the Roma community, this community represents the most marginalised of all identities in the Republic of Serbia. Based on the 2011 census, 147,604 persons of Roma ethnicity are living in the Republic of Serbia, or, in other words, their share of the total population amounts to 2,05 per cent.<sup>899</sup> Moreover, the average age of Roma people is about 28 years, compared to the total Serbian population who is aged 42,2 on average.<sup>900</sup> Hence, they are among the youngest population in the country. In addition, observed by sex, males share 51 percent of the population and females 49 percent.<sup>901</sup> In terms of geographical layout, the largest percent of Roma community, 39 per cent, was registered in Serbia's southern and eastern regions. The smallest percentage, 14 per cent, was recorded in Regions Šumadija and West Serbia.<sup>902</sup>

The freedom of religion is granted by the 2006 Constitution and is generally respected.<sup>903</sup> Furthermore, citizens generally enjoy freedom of assembly. The assault on political opponent Mr. Stefanović in November 2018 prompted massive demonstrations against the Serbian Progressive Party and President Vučić, which continued through the end of the year and the first quarter of 2019. The goal of the protests is to acquire freedom of the media and schedule early parliamentary elections.

The NGO sector generally operates freely. However, those who openly criticize the government or address sensitive or controversial topics face threats and harassment.<sup>904</sup> For instance, in 2018, Ms. Milić, director of the NGO the Centre for Euro-Atlantic Studies, was the subject of a smear campaign in the media in response to her support for war-crimes prosecutions and Serbian membership in the North Atlantic Treaty Organization (NATO).<sup>905</sup>

In addition, academic freedom has largely been upheld, though recent legal changes have raised concerns about political influence.<sup>906</sup> In particular, two laws were adopted in 2017: the Law on Higher Education, which increased the presence of state-appointed members on the National Council for Higher Education and a national accreditation body; and another education law that gave the education minister centralized control over the appointment of school principals.<sup>907</sup>

Furthermore, the independence of the judiciary is compromised by political influence over judicial appointments as well as the fact that many judges report that they have been subject to external

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<sup>899</sup> Statistical Office of the Republic of Serbia (e), 2015, p.1.

<sup>900</sup> Statistical Office of the Republic of Serbia (e), 2015, p.1.

<sup>901</sup> Statistical Office of the Republic of Serbia (e), 2015, p.1.

<sup>902</sup> Statistical Office of the Republic of Serbia (e), 2015, p.1.

<sup>903</sup> Freedom House, available at <https://freedomhouse.org/report/freedom-world/2019/serbia> (last consulted on 16.03.2019).

<sup>904</sup> Ibid.

<sup>905</sup> Ibid.

<sup>906</sup> Ibid.

<sup>907</sup> Ibid.

pressure regarding their rulings.<sup>908</sup> Additionally, politicians regularly comment on judicial matters, including by discussing ongoing cases or investigations with the media.<sup>909</sup>

The freedom of movement is granted, meaning Serbians are free to change their place of employment and education, and have the right to travel.<sup>910</sup> Citizens have been able to enter the Schengen area of the EU without a visa since 2010, though there were several occasions when the EU has deliberated whether or not to freeze non-visa travel to Schengen area.<sup>911</sup>

Domestic violence has continued to be a problem during recent years, despite a number of legal changes that took effect in 2017.<sup>912</sup> These legal changes have not kept Serbia out of the unfortunate position of being one of the top ranked countries for number of domestic violence occurrences in Europe. Moreover, early and forced marriage is reportedly more common among the Roma minority, with more than half of Roma girls marrying before the legal age of 18.<sup>913</sup>

Residents generally have access to the work market, however factors such as weak macroeconomic growth and a relatively high rate of unemployment contribute to labour exploitation.<sup>914</sup> Even though the Serbian government has worked hard on attracting foreign companies to invest and open factories, those who did, particularly those from China or those that produce shoes and garments, are characterized by low wages, unpaid overtime, and hazardous work environments.<sup>915</sup> Hence, even though there are legal protections designed to prevent such abuses, they are not well enforced due to the fear that the foreign investors would leave. The Ministry of Labour, Employment, Veterans Affairs, and Social Affairs, reported that 24 people died in workplace accidents in the first seven months of 2018.<sup>916</sup>

Even though Serbia is a parliamentary democracy with competitive multiparty elections, thanks to the ruling of the Serbian Progressive Party (SNS), recent years have been marked with erosion of political rights and civil liberties.<sup>917</sup> Furthermore, when it comes to the country's five percent electoral threshold for parliamentary representation, this does not apply to parties representing ethnic minorities.<sup>918</sup> For instance, national minorities such as the ethnic Albanian, Bosniak, Slovak, and Hungarian communities won a total of 10 seats in the 2016 legislative elections.<sup>919</sup> In practice

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<sup>908</sup> Freedom House, available at <https://freedomhouse.org/report/freedom-world/2019/serbia> (last consulted on 16.03.2019).

<sup>909</sup> Ibid.

<sup>910</sup> Ibid.

<sup>911</sup> Ibid.

<sup>912</sup> Ibid.

<sup>913</sup> Ibid.

<sup>914</sup> Ibid.

<sup>915</sup> Ibid.

<sup>916</sup> Ibid.

<sup>917</sup> Ibid.

<sup>918</sup> Ibid.

<sup>919</sup> Ibid.

however, they have a relatively muted voice in Serbian politics. There was no party representing the interests of the Roma minority in the 2016 elections.<sup>920</sup>

Furthermore, the government has been receiving criticisms for a lack of transparency in large-scale infrastructure projects and for secrecy surrounding public tenders.<sup>921</sup> Public tenders associated with highways building projects or the state-funded Belgrade Waterfront project are marked by controversy and pushing deadlines.

A satisfactory legal framework is needed for the effective suppression of corruption. In particular, a radical amendment of provisions on the jurisdiction and status of the Anti-Corruption Agency in order to ensure its substantial independence should be prioritized.<sup>922</sup>

Furthermore, 2017 was marked with an increase in the number of right-wing parties, organisations and movements as well as the rehabilitation of World War II Nazi collaborators.<sup>923</sup> Namely, pro-rightists' movements expressed opposition to Serbia's potential NATO membership, Albanian-Serbian talks in Brussels on the normalisation of relations between Belgrade and Priština, cooperation with neighbours with respect to confrontation with the past, the ICTY and war crime trials, and the LGBTI population.<sup>924</sup> A quick reference to the public opinion survey from 2011 that records familiarity with the ICTY showed that 40 percent of respondents thought the purpose of the ICTY's trials was to blame Serbs for war crimes.<sup>925</sup>

With respect to the refugee crisis, several issues arise, even though basic legal protections are put in place. In particular, "the existence of significant obstacles and delays in the process of registering, interviewing and providing identification for asylum seekers and the low number of asylum claims granted; reported cases of efforts to deny access to Serbian territory and asylum procedures, of collective and violent expulsions and of the misapplication of the "safe third country" principle, despite concerns regarding conditions in some of those countries; inadequate conditions in reception centres, including when unaccompanied minors are placed with adults, and the absence of care for individuals outside of reception centres; inadequate access for unaccompanied minors to guardians who make decisions in the best interest of the child; and inadequate procedures to determine the age of unaccompanied minors."<sup>926</sup>

Moreover, regardless of their status: migrant, refugee and asylum-seeking children, Roma children, children with disabilities, minority children, children living in remote areas, children in street situations, children with HIV/AIDS as well as lesbian, gay, bisexual and transgender children, continue to face discrimination with regard to access to education, health care and adequate

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<sup>920</sup> Freedom House, available at <https://freedomhouse.org/report/freedom-world/2019/serbia> (last consulted on 16.03.2019).

<sup>921</sup> Ibid.

<sup>922</sup> BCHR (c), 2018, p. 29.

<sup>923</sup> BCHR (c), 2018, p. 30.

<sup>924</sup> BCHR (c), 2018, p. 30.

<sup>925</sup> IPSOS, 2011, p. 31.

<sup>926</sup> Human Rights Committee, 2017, para 32.

housing.<sup>927</sup> Concerning is the lack of a proper mechanism for the protection against child discrimination, i.e. the commission for protection against discrimination's lack of a special unit to deal with cases of discrimination against children.<sup>928</sup>

In addition, Serbia's education system is characterized by high rates of non-attendance and school dropout, issues that remain problematic for a significant number of pupils in many parts of the country.<sup>929</sup> Efforts to achieve inclusive education are hindered by regional disparities in available funding and resources for schools, insufficient training for teachers and education assistants and continuing resistance from school staff and parents.<sup>930</sup> This means that there are serious equality gaps that continue to prevent children from vulnerable groups, including ASMs, children with disabilities, children from rural areas, deprived children and Roma children, from gaining access to quality education.<sup>931</sup>

Even though Serbia's cooperation with the Office of the United Nations High Commissioner for Refugees is established on a continuous basis, and that there are efforts to improve reception facilities for children and to adapt the child protection system to suit the needs of ASMs, there are still only vague references in the Law on asylum in relation to the special treatment of ASMs. This, coupled with the absence of a proper identification procedure and an insufficient number of interpreters at the border, increases the risk that unaccompanied children will not be identified as such when entering the country.<sup>932</sup>

Furthermore, there is no separate asylum procedure for unaccompanied minors under current regulations, resulting in delays in the appointment of legal representatives, inadequate interpretation services, the appointment of up to three different guardians, who are often not properly trained to act as custodians, the identification of ad hoc accommodation for unaccompanied girls while boys are initially placed in centres for foreign unaccompanied minors, and long-term placement of unaccompanied ASMs under the age of 16 in asylum centres that do not have adequate facilities or trained staff to care effectively for the children 24 hours per day, seven days per week.<sup>933</sup>

Consequently, on the one hand, limited space in asylum centres has forced many ASMs, including unaccompanied and separated children, to sleep on the streets without adequate shelter and in unsafe and unsanitary conditions, while on the other hand others are afraid to go to the centres for fear of being deported, leaving them vulnerable to smuggling rings that allegedly operate in Serbia.<sup>934</sup> In some cases unaccompanied and separated minors have been returned based on the

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<sup>927</sup> Committee on the Rights of the Child, 2017, para 22 (b).

<sup>928</sup> Committee on the Rights of the Child, 2017, para 22 (c).

<sup>929</sup> Committee on the Rights of the Child, 2017, para 54.

<sup>930</sup> Committee on the Rights of the Child, 2017, para 54.

<sup>931</sup> Committee on the Rights of the Child, 2017, para 54.

<sup>932</sup> Committee on the Rights of the Child, 2017, para 56.

<sup>933</sup> Committee on the Rights of the Child, 2017, para 56.

<sup>934</sup> Committee on the Rights of the Child, 2017, para 56.



readmission process, without an assessment of their best interests and without being informed, in a language they can understand, of their right to seek asylum.<sup>935</sup> A number of children of undetermined citizenship are currently at risk of becoming stateless in Serbia.<sup>936</sup>

All children who have been granted refugee status, including internally displaced children since leaving the AP Kosovo and Metohija, are entitled to health and social care and should be included in the educational system. The 2017 Law on Fundamentals of Education System introduced the possibility of enrolling migrant children in schools without the necessary documentation (birth certificate, registered permanent or temporary place of residence).<sup>937</sup> In particular, they are entitled to free primary and secondary education.<sup>938</sup>

The right to social assistance to asylum-seekers and persons granted asylum is guaranteed under the Law on Asylum. The Law on Social Protection in its Article 2 defines social protection as an organized social activity of public interest, which aims to extend assistance and empower individuals and families to lead independent and productive lives in society, and to prevent social exclusion and eliminate its effects.<sup>939</sup>

In 2017, the most of the refugees and migrants staying in Serbia perceived it as a country of transit on their journey to the Western European states where they sought to rebuild their lives.<sup>940</sup> However, due to neighbouring countries' restrictive policies related to the access of the migrants and refugees to their territories and their refoulement to the Serbian territory, ASMs and their families spend ever longer periods of time in collective centres Serbia-wide.<sup>941</sup>

Bearing in mind the scale of asylum-seekers' inflow on a daily basis to Serbian territory, only 13 persons were granted international protection (3 persons granted refugee status, and 10 subsidiary protection) in 2017.<sup>942</sup> Ever since the enactment of the 2008 Law on Asylum, 103 persons were granted international protection on the territory of the Republic of Serbia. This also indicates their perception of Serbia as a transit country, since there was a time when 10,000 asylum-seekers were entering Serbia's territory each day.

Under the 2008 Law on Asylum, Serbia is obliged to ensure conditions that provide for the inclusion of refugees into social, cultural and economic life and allow for their naturalisation. The enactment of the 2017 Integration Decree was of utmost importance towards the establishment of the integration system in the Republic of Serbia.<sup>943</sup> However, its application still remains to be seen.

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<sup>935</sup> Committee on the Rights of the Child, 2017, para 56.

<sup>936</sup> Committee on the Rights of the Child, 2017, para 56.

<sup>937</sup> Committee on the Rights of the Child (d), 2016, para 117-118.

<sup>938</sup> BCHR (d), 2018, p. 105.

<sup>939</sup> BCHR (d), 2018, p.107.

<sup>940</sup> BCHR (d), 2018, p.112.

<sup>941</sup> BCHR (d), 2018, p.112.

<sup>942</sup> BCHR (d), 2018, p.112.

<sup>943</sup> BCHR (d), 2018, p.112.

Asylum-seekers face serious barriers as they attempt to fully integrate into their new Serbian lives. For instance, the continuing absence of a by-law preventing issuance of travel documents to persons granted asylum, high administrative fees for issuance of personal work permits and an inability to acquire citizenship represent the biggest obstacles to their full inclusion.<sup>944</sup>

According to the public opinion survey results, conducted by the Foundation “Ana and Vlade Divac” in May 2017, and within the framework of the project “Support for Local Response to” on a sample of 2,700 persons over 15 from Belgrade, Dimitrovgrad, Lajkovac, Preševo, Sjenica, Tutin, Subotica and Šid, the share of people having a positive attitude towards refugees decreased to 43 percent (from 47 percent), whereas, one third of the respondents expressed a negative attitude, which is a significant increase relative to 19 percent in the past.<sup>945</sup>

In addition, approximately 60 percent of respondents believe Serbia received refugees better than neighbouring countries, and most of the respondents stated they understood and sympathized with the problems of refugees.<sup>946</sup> Also, in the eyes of public, refugees are often perceived as young and mostly peaceful persons.<sup>947</sup>

Furthermore, half of the respondents feared that refugees might transfer diseases to Serbian citizens and one third felt insecure with respect to terrorist attacks.<sup>948</sup> The majority of respondents believe that refugees should be taken care of by the EU, and only one third believing the Serbian Government should take care of them.<sup>949</sup>

Even though there were no major reported incidents involving xenophobia and racism in Serbia since the beginning of the refugee crisis, advocacy in local communities where asylum and reception centres are located must continue in order for the population to be informed of the new situation and raise awareness.<sup>950</sup> This will help prevent segregation based on ethnic or racial affiliation.<sup>951</sup>

## 2. Integration 2018

The position of asylum-seekers has changed during the last year, since new legal framework for the exercise of rights and obligations related to the social integration of persons granted asylum has been adopted with the LTP.<sup>952</sup> In addition, the LTP promulgation was followed by a change of the 2017 Decree on the Integration of Foreigners Granted Refugee Status in the Social, Cultural and Economic Life of the Republic of Serbia.<sup>953</sup> The Decree on Changes and Amendments of

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<sup>944</sup> BCHR (d), 2018, p.112.

<sup>945</sup> BCHR (d), 2018, p.112.

<sup>946</sup> BCHR (d), 2018, p.112.

<sup>947</sup> BCHR (d), 2018, p.112.

<sup>948</sup> BCHR (d), 2018, p.113.

<sup>949</sup> BCHR (d), 2018, p.113.

<sup>950</sup> BCHR (d), 2018, p.113.

<sup>951</sup> BCHR (d), 2018, p.113.

<sup>952</sup> BCHR, 2018, p. 81.

<sup>953</sup> BCHR, 2018, p. 81.

Decree on the Integration of Foreigners Granted Refugee Status in the Social, Cultural and Economic Life of the Republic of Serbia (Integration Decree, Official Gazette RS, 56/18) entered into force on the 26<sup>th</sup> of July 2018.<sup>954</sup>

The adoption of the LATP contains natural novelties compared to the 2007 LA. In particular, regarding the integration of persons granted asylum, key novelty lies within Article 59 of the LATP. These are the equalization of the rights and obligations of persons granted refugee status with those of the persons granted subsidiary protection has been foreseen. Consequently, the changes of the above Decree had to follow and to apply also to persons granted subsidiary protection.<sup>955</sup>

The guarantees set forth in the afore-mentioned Article 59 of the LATP are as follows: the right of residence, accommodation, freedom of movement, health care, education, and access to the labor market, legal and social assistance, and property, freedom of religion, family reunification and assistance during integration.

In other words, the rights of these persons are equal to those of the nationals of the Republic of Serbia in the domain of access to education, the right to intellectual property and free access to courts, legal aid, and exemption from payment of judicial and other fees before state authorities.<sup>956</sup> However, access to the labour market, health care and the right to movable and immovable property are governed by the relevant regulations on the status of foreigners.<sup>957</sup>

Equalization of rights and obligations of the persons granted refugee status and the persons granted subsidiary protection does not include the right to a travel document.<sup>958</sup> Article 91 of the LATP stipulates that a travel document can be issued only to persons granted refugee status with an expiry date of five years, whereas it can be issued only in exceptional humanitarian cases to persons granted subsidiary protection and with an expiry date of one year.

Furthermore, according to Article 59 of the LATP, integration assistance has now been included among the rights guaranteed to the persons granted asylum, as opposed to the Asylum Law, which guaranteed this assistance only to persons granted refugee status. The Government shall specify the terms and conditions for the inclusion of persons who have been granted the right to asylum in the social, cultural, and economic life, and shall enable the naturalization of refugees, which is usually initiated through a proposal of the Commissariat for Refugees and Migration.<sup>959</sup>

Furthermore, Article 59 of the LATP sets out the obligation of the person granted the right to asylum to attend Serbian language classes. In the case that the person fails, without a justified reason, to report to the CRM to attend Serbian language and alphabet courses within 15 days from

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<sup>954</sup> BCHR, 2018, p. 81.

<sup>955</sup> BCHR, 2018, p. 81.

<sup>956</sup> BCHR, 2018, p. 81.

<sup>957</sup> BCHR, 2018, p. 81.

<sup>958</sup> BCHR, 2018, p. 81.

<sup>959</sup> BCHR, 2018, p. 82.

the date of the effectiveness of the decision granting him/her the right to asylum or stops attending the course, he/she loses the right to financial assistance for temporary accommodation, as well as the right to one-time financial assistance provided from the budget of the Republic of Serbia.<sup>960</sup>

Furthermore, Article 5 of the Decree on the Integration of Foreigners Granted Asylum in the Social, Cultural and Economic Life of the Republic of Serbia stipulates that persons granted the right to asylum are also entitled to orientation classes that cover topics such as Serbian culture, history and the constitutional order lasting up to 30 hours a year. However, after the launch of the pilot programme in September 2018, a number of challenges were identified. In particular, the language barrier, given that it is not possible to ensure interpreters for all necessary languages, the absence of incentives stipulated for participation in the programme, and a still low number of persons granted refugee status, which largely limits the opportunities for the adaptation of the programme.<sup>961</sup>

Article 64 of the LATP on the right to education foresees equalization of persons granted asylum with Serbian citizens, since they are entitled to pre-school, primary, secondary and higher education under the same conditions. This is a novelty compared to the 2007 LA, which only guaranteed the right to free primary and secondary education.<sup>962</sup>

## 2.1. The right to work

Articles 65 and 57 of the LATP guarantee access to the labour market to persons granted asylum as well as to asylum-seekers, respectfully. When it comes to the exercise of the right to work, the LATP refers to the implementation of the law governing employment of foreigners.<sup>963</sup>

Moreover, Article 2 (8) of the Law on Employment of Foreigners interprets the term refugee as a foreigner who was granted the right to asylum in line with the asylum-related regulations, while Article 2 (9) categorizes asylum-seekers, persons granted temporary protection, victims of trafficking and persons granted subsidiary protection as *special categories of foreigners*.

Work permits are issued to persons granted refugee status for a period of validity of an identity card for persons granted asylum. This is typically five years in practice, whereas a person granted subsidiary protection is issued an identity card for the duration of status of a person with subsidiary protection or, in other words, for a period of one year in practice.<sup>964</sup>

Article 13 (3) of the Law on Employment of Foreigners stipulates that an asylum-seeker may be issued a work permit nine months following submission of an asylum application, provided that the decision on the application was not passed without his/her fault, for the period of six months with the possibility of extension for as long as the asylum-seeker status lasts.

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<sup>960</sup> BCHR, 2018, p. 82.

<sup>961</sup> BCHR, 2018, p. 83.

<sup>962</sup> BCHR, 2018, p. 83.

<sup>963</sup> Article 65 (2) and Article 57 of the LATP.

<sup>964</sup> BCHR, 2018, p. 85.

National Employment Service is in charge issuing work permits according to the provisions of the Law on Employment and Insurance in Case of Unemployment.<sup>965</sup> However, the emerged challenge in exercising this right remains the high cost of the Republic's administrative fee for issuance of a personal work permit.<sup>966</sup> It could be argued that the categories of persons in search of employment should be partially or fully exempt from paying the fee. Adding to frustration, the practice of the National Employment Service is not uniform.<sup>967</sup>

Similarly, when contracting employment, another practical problem related to outdated databases of the Central Register of Mandatory Social Insurance complicates things.<sup>968</sup> When registering an employee at the Republic Fund for Pension and Disability Insurance, one must present a unique citizen registration number, or, in case of foreigners, the so-called foreigner registration number.<sup>969</sup> Hence, the right to access the labour market was impeded, as the competent authorities did not recognize their registration numbers, established by the MOI, due to inefficiency of the Central Register of Mandatory Social Insurance.<sup>970</sup> To be more precise, registration of employees at the Republic Fund for Pension and Disability Insurance is not possible if the foreigner personal number is not entered into the database of the Central Register of Mandatory Social Insurance, which receives this information from the MOI.<sup>971</sup> Apparently, the databases are not updated automatically; hence this problem worsened the situation of refugees and asylum-seekers and additionally raised distrust of potential employers towards this vulnerable category of persons.<sup>972</sup>

There are also no vocational training programmes, advancement programmes or programmes for acquisition of practical experience or labour market counselling services for persons enjoying international protection in Serbia.<sup>973</sup> This remains true even in the first quarter of 2019.<sup>974</sup>

## **2.2.The right to education**

Since the right to education is the main topic of this dissertation, and is dealt with throughout the paper, the following information highlights novelties that come to light with the adoption of new legislation in 2018.

Article 55 and 64 of the LATP guarantee the right to education of asylum-seekers and persons granted asylum, respectfully. ASMs are to be granted access to the education system three months at the latest from the submission of the asylum application.

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<sup>965</sup> BCHR, 2018, p. 85.

<sup>966</sup> BCHR, 2018, p.85.

<sup>967</sup> BCHR, 2018, p.85.

<sup>968</sup> BCHR, 2018, p.86.

<sup>969</sup> BCHR, 2018, p.86.

<sup>970</sup> BCHR, 2018, p.86.

<sup>971</sup> BCHR, 2018, p.86.

<sup>972</sup> BCHR, 2018, p.86.

<sup>973</sup> BCHR, 2018, p.86.

<sup>974</sup> BCHR, 2018, p.86.

Therefore, domestic legislation is in line with the obligations set down in Paragraph 32 of the New York Declaration for Refugees and Migrants, Resolution adopted by the General Assembly, on the 3<sup>rd</sup> of October 2016. Moreover, the cooperation of the Ministry of Education, UNICEF, CRM and other international and non-governmental organizations has been established throughout the years. As such, all ASMs were included in mainstream education in the academic 2017/2018 school year in line with the regulations governing mandatory attendance of primary schools for all children irrespective of their status or the status of their parents.<sup>975</sup>

However, a practical challenge has emerged: the lack of regular school attendance by underage asylum-seekers.<sup>976</sup> As previously already noted, the language barrier and limited number of interpreters for languages spoken among refugees resulted in lack of interest among ASMs to attend classes they do not understand.<sup>977</sup> Moreover, there is a lack of interest on the part of parents in educational activities, which is largely attributed to their certainty that their stay in Serbia is only temporary.<sup>978</sup>

On the matter of validation of foreign diplomas, it could potentially concern all recognized refugees. However, their validation is wanted in sectors where employment is conditioned by possession of an adequate license such as medicine or law.<sup>979</sup> Even though this issue was not adequately defined in local legislation in the past, the Law on Professions of Special Interest for the Republic of Serbia and Conditions for their Practice enacted in September 2018 should help overcome the problem of validating foreign university diplomas and certificates.<sup>980</sup> The law should also provide clearer specification of additional conditions for acquisition of certain professional titles in line with the national law.<sup>981</sup>

Unfortunately, there is no state support, i.e. financial support, planned at the moment for persons who cannot afford the fees payable for validation procedure.<sup>982</sup> In other words, if they wish to validate their diplomas, the refugees themselves must bear the costs of the procedure.<sup>983</sup> In case they are unable to submit the requested documents for justified reasons, no other procedure has been provided such as verification of previously acquired competencies.<sup>984</sup> It would make sense for such a procedure to exist, as it would allow these persons to acquire professional competencies and diplomas necessary for their inclusion into the labour market.<sup>985</sup>

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<sup>975</sup> BCHR, 2018, p. 87.

<sup>976</sup> BCHR, 2018, p. 87.

<sup>977</sup> BCHR, 2018, p. 87.

<sup>978</sup> BCHR, 2018, p. 87.

<sup>979</sup> BCHR, 2018, p. 88.

<sup>980</sup> BCHR, 2018, p. 88.

<sup>981</sup> BCHR, 2018, p. 88.

<sup>982</sup> BCHR, 2018, p. 88.

<sup>983</sup> BCHR, 2018, p. 88.

<sup>984</sup> BCHR, 2018, p. 88.

<sup>985</sup> BCHR, 2018, p. 88.

### 2.3 The right to personal documents

In light of the adoption of new legislation regarding the position of asylum-seekers, the Rulebook on the Content and Design of the Asylum Application Form and Documents Issued to Asylum Seekers and Persons Granted Asylum or Temporary Protection was adopted in 2018.<sup>986</sup> It defines in greater detail forms of identity cards of asylum-seekers and recognized refugees.<sup>987</sup>

Even though the new Rulebook has been adopted, one problem remains. The documents issued still lack even minimum security features, as they are issued on ordinary plasticized paper, and the Asylum Office staff fills them in by hand.<sup>988</sup> Another drawback is that the identity cards do not have a field for the foreigner registration number.<sup>989</sup> In practice this means persons granted asylum and asylum-seekers must also carry the proper certificate that shows possession of a foreigner registration number in order to access numerous rights.<sup>990</sup>

Furthermore, previous asylum law stipulated that the Minister of Interior would adopt a bylaw on the content and design of travel documents for persons granted refugee status within 60 days from the date of effectiveness of that Law.<sup>991</sup> However, that enactment never took place.<sup>992</sup> Instead, an identical solution was prescribed in Article 101 of the LATP, and, nevertheless, after the 60-day period passed, the appropriate bylaw was not put in place, although the competent minister adopted rulebooks on other forms such as ID card forms immediately after the Law entered into effect.<sup>993</sup>

This issue led to a dispute before ECtHR (*S.E. v. Serbia*), which centered around the deprivation of the right to freedom of movement through failure to issue travel documents to the persons granted asylum.<sup>994</sup> In the case, a Syrian national recognized as a refugee lodged an application asserting that the Border Police Administration informed him in a non-appealable letter that it was unable to issue a travel document to him for lack of a by-law.<sup>995</sup> Serbia's Constitutional Court dismissed a constitutional appeal in that same case on the 20<sup>th</sup> of June 2016 stating that the constitutional appeal may be filed against an individual enactment or a decision only, and not for the fact that a certain by-law was not enacted.<sup>996</sup> Therefore, it was actually BCHR that lodged an application to the ECtHR claiming violation of Article 2 (2) of the fourth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which stipulates that every person shall be free to leave any country, and that no restrictions may be placed on the

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<sup>986</sup> BCHR, 2018, p. 88.

<sup>987</sup> BCHR, 2018, p. 88.

<sup>988</sup> BCHR, 2018, p. 89.

<sup>989</sup> BCHR, 2018, p. 89.

<sup>990</sup> BCHR, 2018, p. 89.

<sup>991</sup> BCHR, 2018, p.89.

<sup>992</sup> BCHR, 2018, p.89.

<sup>993</sup> BCHR, 2018, p.89.

<sup>994</sup> BCHR, 2018, p.89.

<sup>995</sup> BCHR, 2018, p.89.

<sup>996</sup> BCHR, 2018, p.89.

exercise of this right other than those specified by law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, etc.<sup>997</sup>

As of April 2019, the parties are still in the phase of responding to the Court-posed question about whether there is a restriction of the freedom of movement and whether the conditions prescribed in Article 2 (3) of the fourth Protocol have been fulfilled.<sup>998</sup>

#### **2.4. The right to family reunification**

Article 70 of the LATP sets forth that persons granted asylum have the right to family reunification. Furthermore, Article 2 (12) of the LATP defines family members as the spouse, provided that the marriage was contracted before the arrival to the Republic of Serbia, the common-law partner in accordance with the regulations of the Republic of Serbia, their minor children born in legal or in common-law marriage, minor adopted children, or minor step-children, as well as other persons, taking into account particularly the fact that they had been supported by the person who has been granted asylum or subsidiary protection, their age and psychological dependence, including health, social, cultural, or other similar circumstances. The results of the application of this legal provision remain to be seen in the future.

#### **2.5. The right to citizenship**

The Republic of Serbia shall ensure conditions for naturalization of refugees, whereas the conditions, the procedure and other issues relevant to their naturalization shall be defined by the Government at the proposal of CRM.<sup>999</sup> This obligation derives from the 1951 Refugee Convention, which stipulates that the Contracting Parties shall as far as possible facilitate the assimilation and naturalization of refugees.<sup>1000</sup> On the other hand, the relevant changes of the Citizenship Law specifying the conditions for acquisition of citizenship of this vulnerable category of persons have not been adopted yet.<sup>1001</sup> Hence, persons granted asylum remain completely deprived of the possibility to naturalize, which might affect their wish and motivation to integrate into Serbian society.<sup>1002</sup>

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<sup>997</sup> BCHR, 2018, p. 89.

<sup>998</sup> BCHR, 2018, p. 90.

<sup>999</sup> BCHR, 2018, p. 92.

<sup>1000</sup> BCHR, 2018, p. 92.

<sup>1001</sup> BCHR, 2018, p. 92.

<sup>1002</sup> BCHR, 2018, p. 92.



## CHAPTER V

### CASE STUDY SERBIA: The Right to Education

In 2015, the Commissariat for Refugees and Migration noticed the inflow of some 10,000 asylum seekers on a daily basis.<sup>1003</sup> These asylum seekers were only transiting through Serbia or remained on its territory up to 3 days. However, in spring 2016 the Balkan route was officially closed, leading to the situation that more and more people were *trapped* in Serbia. In April 2017, 8,000 asylum seekers were placed in refugee camps all around the state, even though the official capacity was 6,000. Unofficially, more asylum seekers lived out in the open, the number of which reportedly reached 1,500. A majority of them could be seen in the park near the Belgrade bus station or living in terrible conditions in the so called “barracks” near the Belgrade bus station.

The most interesting of these figures is that 50 percent of these asylum seekers are ASMs. In April 2017 there were 2,904 ASMs. Only 50 to 60 of these ASMs were included in the Serbian education system. These figures change rapidly though. Up until the 6<sup>th</sup> of February 2017, there were 3,103 ASMs in refugee camps, but then, four days later on the 10<sup>th</sup> of February, only 3,031. This decrease in numbers is due to the fact that people left towards Hungary, Croatia, and, recently, Romania. Romania is starting to be a new route that migrants are using, since Hungary has changed its legislation and started imprisoning asylum-seekers found to be crossing the border with Serbia without valid visas. Apart from that, Hungary has made a tacit agreement with Serbia to take in 10 asylum-seekers, but nevertheless started returning 50-60 on a daily basis.

Data shows that ASMs started being included into the Serbian education system in late 2016. This Chapter will examine more closely the right to education of ASMs in Serbia. In particular, it will look at guidelines for enrollment: are they based on the ASMs stated or estimated age, their previously acquired knowledge, or admission tests? It will also look at issues such as the fast drop-out rates: can they be attributed to ASMs proceeding with their journey towards Western European countries, in particular Germany? Additionally, the issue of keeping their track records in schools, grading system, and the language barrier and consequently the limited number of subjects that they can participate in? This further draws on to question of the state examination that needs to be taken after finishing school in order to graduate and get the degree.

Finally, in order to have these questions answered, a field trip to Serbia was conducted. Education-related state institutions as well as the independent institutional sector visited and their staff was

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<sup>1003</sup> Information provided in this Chapter is obtained through field data collection, i.e. monitoring and observation as well as interviews with respective staff from the Commissariat, Ministry of Education, school staff, school psychologist/ pedagogists, refugee camp staff, ASMs, etc.

interviewed. Some informal hot spots where asylum-seekers gather were visited in order to detect the presence of political willingness for thorough inclusion of ASMs into the Serbian education system. Last but not the least, unofficial interviews with ASMs were carried out in order to get the complete picture on the inclusive exercise of the right to education.

## 1. Positive legislative in the Republic of Serbia

By ratifying the 1990 United Nations Convention on the Rights of the Child, the Republic of Serbia has committed itself to ensuring the exercise of all children's rights, and, in particular the right to education. While the Constitution of the Republic of Serbia stipulates in Article 71 that everyone has the right to education, which is free and compulsory in elementary school and high school education is free. General principles of the Law on the basics of the education system require ensuring equal right and access to education and upbringing. The same law prescribes in Article 6 that a foreign citizen and a stateless person are enrolled in school and have the right to education under the same conditions and in the manner prescribed by law for citizens of the Republic of Serbia.

Furthermore, each local government has the so-called Interdepartmental Commission (IRK).<sup>1004</sup> There are also institutions at the pre-school and school levels that are obliged to form STIO teams (an expert team for inclusive education in school). STIO teams provide additional support for each student from a vulnerable social group, which is important for this research, as asylum-seeking minors belong to vulnerable groups of children on multiple grounds.<sup>1005</sup>

There are also several strategic documents that have been adopted in the field of migration policy: the Migration Management Strategy; the Reintegration strategy for returnees based on readmission agreements; and the Strategy for Combating Illegal Migration in the Republic of Serbia for the period 2009-2014.<sup>1006</sup>

The Ministry of Education prepared the Draft Document, *Professional Instruction for the Inclusion of Refugees / Asylum-seekers in the Education and Upbringing System*, which was approved by the Minister of Education in April 2017 and delivered to schools in May 2017.

The Professional Instruction for the inclusion of refugee / asylum seeking students in the education system (hereinafter: Professional Instruction) closely regulates the enrollment of ASMs and how to provide support measures for inclusion in the educational process. The Professional Instruction refers to the provisions concerning the enrollment of pupils in school, which is founded in the Law on the Foundations of the System of Education and Upbringing<sup>1007</sup>, the Law on the Prohibition of Discrimination<sup>1008</sup>, the Rulebook on closer criteria for recognizing forms of discrimination by an

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<sup>1004</sup> Ministry of Education, Paper on education of ASMs, 2017, p.1.

<sup>1005</sup> Ministry of Education, Paper on education of ASMs, 2017, p.1.

<sup>1006</sup> Ministry of Education, Paper on education of ASMs, 2017, p.1.

<sup>1007</sup> Official Gazette of RS No. 72/09, 52/11 and 55/13, 35 / 15- Authentic interpretation and 62/16-US.

<sup>1008</sup> Official Gazette of the Republic of Serbia No. 22/09.

employee, child, pupil or a third person in the institution of education<sup>1009</sup>, the Law on Asylum<sup>1010</sup> and other laws regulating the rights of a child and pupils.

Professional Instruction sets forth criteria for suggested enrollment. Basically, ASMs are being enrolled in educational institutions upon arrival to the RS, and those who have evidence of previously acquired education are enrolled in the appropriate grade in accordance with the age and previously acquired level of education, after recognizing the foreign school certificate by the ENIK NARIK Center.<sup>1011</sup> Those ASMs who do not have evidence of previously acquired education, are enrolled based on the results achieved on the admission test.

For students who do not possess evidence of previous education from the country of origin, the Geneva Convention on the Status of Refugees applies, which stipulates that the State in which the refugee resides will endeavor to provide all assistance in order to fully exercise their rights.

The parent, the guardian or the competent institution addresses the school with the application for enrollment. The school is obliged to respond within five working days and inform the educational advisers in charge of inclusive education in the relevant school administration within the same time limit. An institution that is not able to receive a student is obliged to submit a written explanation to the school administration, who will then estimate the justification and take measures for the enrollment of pupils into schools where possible. The school's STIO team is obliged to draft a School Support Plan for the inclusion of refugees / asylum seeking students.<sup>1012</sup> The school support plan should include the activities of the departmental officer, organization of general parental meetings, and classes of the parent meeting in order to prepare parents and students for the arrival of a new student who needs support.

On the other hand, the team in charge of the previous knowledge test can be supplemented by the following: translator, foreign language teacher, pedagogical assistant (if already working in school), the guardian of the Center for Social Work or the parent. The evaluation of the previous knowledge examination ends within seven working days pursuant to Article 55 of the Law on Primary Education and Education and Article 87 of the Law on Secondary Education and Upbringing.<sup>1013</sup> Based on the assessment, the Student Support Plan is formulated and determines into which class the student will be enrolled.<sup>1014</sup> The STIO team proposes members of the Team

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<sup>1009</sup> Official Gazette of the Republic of Serbia, No. 22/16

<sup>1010</sup> Official Gazette of the Republic of Serbia, No. 109/07

<sup>1011</sup> Ministry of Education, Nemanjina 22-26, 6 floor, wing C, office 24, information on the phone 36 16 577, from 13:00 to 14:00

<sup>1012</sup> Draft Professional Instruction, 2017, p.1.

<sup>1013</sup> Draft Professional Instruction, 2017, p. 2.

<sup>1014</sup> Draft Professional Instruction, 2017, p. 2.

for additional support to the student, and the director of the school will then appoint these proposed members.<sup>1015</sup>

When ASMs are enrolled in the appropriate class after taking the admission test, a preparatory period of two weeks to two months is provided so activities can be implemented individually. This slower introduction of new activities helps ASMs gradually adapt to their new classroom environment.<sup>1016</sup>

The Student Support Plan contains the program of adaptation and overcoming of stress, an intensive language learning program, the possibility to participate in regular teaching and extracurricular activities implemented by the school, individualization of teaching activities through adaptation of the schedule, didactic material and methods of work, and involvement in extracurricular activities with peer support.<sup>1017</sup>

### **1.1. Evaluation and monitoring**

This assessment is based on a comprehensive and individualized approach based on equal opportunities in addressing students' needs in order to develop a Student Support Plan that considers the student's best interest. The assessment is carried out by the Pre-Audit Team in cooperation with the students who know the student best and with the necessary support from the interpreter. To develop the Student Support Plan, basic data on past educational experiences, language competencies and students' interests are gathered, and, using these as a basis, a plan for the first month of work is developed.

Monitoring of pupils' progress is carried out daily and is reviewed every two weeks or up to a month, depending on the process of adapting students and achieving the planned goals.<sup>1018</sup> Parents or guardians are involved throughout the entire process as associates. They must be informed of and agree to proposed changes to the activities within the Student Support Plan prior to its implementation.

### **1.2. School Track Record**

The school keeps prescribed records and pedagogical documentation on the student's progress. Each student's portfolio includes the student's achievement, reports on the implementation of the Student Support Plan, special interests of students, language skills, and correspondence with parents or guardians.<sup>1019</sup> If a student leaves the institution during the school year, parents /

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<sup>1015</sup> Draft Professional Instruction, 2017, p. 2.

<sup>1016</sup> Draft Professional Instruction, 2017, p. 2.

<sup>1017</sup> Draft Professional Instruction, 2017, p. 2.

<sup>1018</sup> Draft Professional Instruction, 2017, p. 2.

<sup>1019</sup> Draft Professional Instruction, 2017, p. 3.

guardians of the student are sent a copy of the portfolio written in Serbian and English, so that there will be evidence for continuing education in the country that will be the next destination.

## 2. Situation on the ground

At the time of the outbreak of the so-called ‘refugee crisis’, only the non-governmental sector in Serbia started responding to the situation and providing assistance to people in need.<sup>1020</sup> The respective activities that were carried out consisted mostly of humanitarian aid, medical assistance, providing psychosocial and legal-informative support. Non-formal education is present in the refugee camps, however funding is a problem. Therefore, activities like these are often funded by foreign donations. The RS provides funds only for the formal education of ASMs.

In the refugee camps, ASMs can attend language lessons for Serbian, English, and occasionally German or French, depending on available volunteers conducting the lectures. Students of pre-school age may attend various workshops, in particular European culture workshops, or arts related classes. Unaccompanied ASMs are legally entitled to a guardian, which is to be immediately appointed by the Center for Social Work. In practice, this means that there are about 70 minors per one guardian. Hence, in reality they usually never meet, which leaves unaccompanied ASMs vulnerable to various hazards.

Before the Professional Instruction for how best to integrate ASMs reached schools, the schools themselves either developed some kind of assessment tests and, according to the result, placed ASMs into a certain grade and class, or they placed the ASM based on the sole recommendation of the Ministry of Education (which usually represents enrollment based on a stated age). Lectures are held in Serbian language, occasionally with the presence of a translator. So far there are only a few students attending high school. Formal education for ASMs takes place in three to four classes a day, though they do not have lectures every day.

In practice, they attend classes in Serbian language, English language, Music, Arts, the World Around Us, and some creative workshops. In cooperation with the Faculty of Philology, the Danish Council and the American Embassy in Belgrade, the Ministry of Education will develop a programme for learning Serbian as a foreign language, since so far in schools it is only being taught as a mother tongue. The modules would be created to fit the age groups, and the programme as well as its standards is to be created by 2018. Resistance to the inclusion of ASMs has been limited. Officials from Lajkovac, for example, insisted that ASMs would be secluded. Generally though resistance is sporadic.

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<sup>1020</sup> Information provided in this Chapter is obtained through field data collection, i.e. monitoring and observation as well as interviews with respective staff from the Commissariat, Ministry of Education, school staff, school psychologist/ pedagogists, refugee camp staff, ASMs, etc.

Starting in 2015, attention grew and shifted to providing better care to asylum-seeking minors. However, it was only in late 2016 that the Republic of Serbia started including ASMs into its education system. While ASMs who travel with family members are placed in the respective refugee camps, those who are unaccompanied are placed into State-owned shelters such as the Institute for the Upbringing of Children and Youth Belgrade and the Institute for the Upbringing of the Youth of Niš.

During their stay in the above-mentioned shelters, ASMs are provided with accommodation, food, and free medical care. The Center for Protection and Assistance to Asylum Seekers (APC / CZA) provides free legal representation during the entire asylum procedure, psychosocial protection and is regularly present at the shelter and the asylum centers where children are accommodated until merging with the family.

Workshops that are organized in refugee camps are mostly language related, or represent psychological support, cultural or creative workshops, or are simply a kind of non-formal socialization for the minors. According to information obtained from the Ministry of Education and the Commissariat, there are 3,031 ASMs placed in refugee camps in Bogovađa, Krnjača, Banja Koviljača, Obrenovac, Bujanovac Preševo and other (please refer to the table below).

Age	Banja Kovi	Bogovada	Sjenica	Tutin	Krnjača	Preševo	Subotica	Adaševci	Sid- Grey	Sombor	Bujanov	imitrovgra	Principo	Obrenov	Divljana	Bosilegrad	Pirot	Total
0-6 months	2	1	5	2	14	5	1	11	4	1	3	1	2	0	0	0	2	54
6-12 months	1	0	2	0	19	5	4	9	4	2	2	0	1	0	1	1	1	52
1-2 years	5	8	24	9	65	29	3	51	8	3	11	11	15	0	3	3	8	256
3-4 years	7	17	27	5	62	31	6	48	17	5	13	5	17	0	18	3	11	292
5-6 years	3	14	25	5	62	36	7	44	19	12	9	6	19	0	3	6	15	285
7-8 years	7	13	24	8	50	36	3	48	17	12	11	7	17	0	11	4	17	285
9-10 years	4	13	26	4	49	29	5	53	27	6	5	6	15	4	6	1	14	267
11-12 years	4	9	23	5	29	27	1	44	18	5	7	3	14	33	7	0	8	237
13-14 years	5	11	20	5	67	45	7	65	25	4	11	2	11	72	3	1	11	365
15-16 years	5	16	24	2	120	101	12	109	51	2	15	8	14	56	5	1	13	554
17-18 years	5	23	8	1	83	54	12	36	42	6	39	1	8	111	4	5	18	456
<b>Total</b>	<b>48</b>	<b>125</b>	<b>208</b>	<b>46</b>	<b>620</b>	<b>398</b>	<b>61</b>	<b>518</b>	<b>232</b>	<b>58</b>	<b>126</b>	<b>50</b>	<b>133</b>	<b>276</b>	<b>61</b>	<b>25</b>	<b>118</b>	<b>3103</b>

**Table No.4** Number of the ASMs in refugee camps from January 30 to February 6, 2017<sup>1021</sup>

<sup>1021</sup> Data obtained from Ministry of Education and Commissariat for Refugees, Field Trip 2017.

Total	Age
57	0-6 months
51	6-12 months
258	1-2 years
286	3-4 years
269	5-6 years
276	7-8 years
249	9-10 years
239	11-12 years
370	13-14 years
537	15-16 years
439	17-18 years
<b>3031</b>	<b>Total</b>

*Table No.5 Number of ASMs in refugee camps from 6th February to 10th February 2017<sup>1022</sup>*

As Tables 4 and 5 show, the number of ASMs in the refugee camps vary on a daily basis. In other words, on 6th February there were 3,103 ASMs and four days later there were 72 less.

### 2.1. Inclusive Education System in Serbia

Prior to 2015 when the programme of inclusion of ASMs into the state's education system started, inclusion was sporadic.<sup>1023</sup> In 2013, CZA enrolled its first asylum seeking minor in a primary school in Bogovađa, whereas in 2014 there were another seven ASMs included in the education system. In the first six months of 2015, 30 ASMs were enrolled in primary school.<sup>1024</sup>

The Ministry of Education, in cooperation with respective state institutions on the inclusion of ASMs, identified the challenges that could be found below.<sup>1025</sup>

### 2.2. Challenges

- Refugee children rarely have documentation of previous education, hence making it almost impossible to have an insight into previously acquired education and achievement;
- It is not possible only on the basis of age to determine into which grade the ASM should be enrolled, although it is recommended to be in the same peer group or that the difference in age is as low as possible;
- Among the population of children who are on the territory of the RS, the following modalities exist when it comes to education:
  - Children who have long been excluded from education in the country of origin,

<sup>1022</sup> Data obtained from Ministry of Education and Commissariat for Refugees, Field Trip 2017.

<sup>1023</sup> PPP obtained from Ministry of Education, Field Trip 2017, slide 26.

<sup>1024</sup> PPP obtained from Ministry of Education, Field Trip 2017, slide 26.

<sup>1025</sup> Ministry of Education, Paper on education, Field Trip 2017, p.3.



- Children who have been excluded from education for a long time in the country of origin but have had some form of education in the transit countries where they spent a long time (with frequent disruptions due to migration),
  - Children who have never been in education, neither in the country of origin, nor in the countries of transit.
- There is little knowledge about the education systems they come from, especially about the contents of individual subjects and the criteria that are used to monitor progress.
  - Although most countries have some form of placement tests that are used to assess school readiness or to assess the ability to enroll in different programs / profiles, they are usually not adequate for the population of migrant students;
  - Tests must reliably test targeted competence / ability, but for most language proficiency is crucial for good accomplishment;
  - In cases where the child does not know the language of instruction or the language of the test, an interpreter must be used;
  - In many countries, there are diversified school support systems, from mobile teams, resource centers and counseling centers that exist at the local level, to coordinators in schools. In Serbia, only psychological and pedagogical services are present at schools;
  - Language support has a long tradition in developed countries and different programs have been developed, unlike in Serbia. It has developed the Program of Learning Serbian as a Foreign Language in 2017 for A1 and A2 in cooperation with the Faculty of Philology, but the standards and program of this subject are still missing;
  - The possibility of more teachers to work in ‘admission classes’ exist in other countries, whereas in Serbia only one teacher manages the class;
  - Targeted funding based on the number of students is not present in Serbia - so it is still not possible to withdraw additional funds in case of increased school needs;
  - The culture of horizontal learning among teachers is remains undeveloped in Serbia.

### 3. Activities undertaken by the Ministry of Education

With the afore-mentioned challenges in mind, some state reaction followed.<sup>1026</sup> At the beginning of the school year in 2017, the Ministry of Education sent all schools a letter informing them that, according to domestic laws and the Geneva Convention, schools are obliged to enroll ASMs without insisting on the required documentation. Based on the Work Plan for Implementation of the Program of Cooperation between UNICEF and the Government of the Republic of Serbia in the field of education in 2016-2017, the Ministry of Education became involved in the implementation of the Common Concept with UNICEF. The Common Concept outlines terms for

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<sup>1026</sup> Ministry of Education, Paper on education, Field Trip 2017, p.4.

the ways and types of support ASMs should receive in order to ensure quality education despite living in emergency situations. Within this very intensive cooperation, the following activities were realized:

- Strengthening the system of inclusion of ASMs into Serbia's education system and of non-formal education programs, especially for those who will remain in Serbia for a longer period of time;
- In cooperation with the Center for Education Policy (COP), the project "*Supporting the Education of Migrant / Refugee Students in the Territory of the Republic of Serbia*" was launched, and the Ministry sent letters to schools and preschool institutions from the territory, such as the Municipality of Palilula, and to school administration in Belgrade and Valjevo, where the collective and transit centers were. Put differently, the Ministry invited schools to participate in this project and to inform the Ministry of their capacity for how many ASMs they could enroll;
- Within the Project, two trainings for facilitators, activists of various NGO programs related to protection of ASMs, have been implemented in order to strengthen their capacities for the development and implementation of non-formal education programs. A full-day consultative meeting with representatives from school administrations in Belgrade, Valjevo and Leskovac as well as with colleagues from the Center for Social Work Palilula was realized in order to prepare effective procedures for involving children of asylum seekers in preschool institutions and schools. This meeting also helped develop a plan for inclusion and support at the institutional level, and it identified an effective way for educational advisers to record and monitor the progress ASMs are making in schools;
- A training programme was developed to strengthen the intercultural competencies of staff in the institutions that work with ASMs who do not speak the language of instruction, had a break in education and/or who came from a different cultural environment;
- All other schools should gradually include ASMs and they have the right to free use of public transport with the certificate showing that they have expressed intention to seek asylum in Serbia;
- Since 2016, the Indicators for identifying child victims of trafficking / Protection against violence unit have been developed within the Ministry of Education.

As to institutions that participate in the project of inclusion of ASMs into Serbian formal education system, please see Table No. 6 below.

<b>Name of institution</b>	<b>Municipality</b>	<b>School Administration</b>	<b>Number of ASMs attending the school</b>
Primary School „Jovan Cvijić“	Palilula	Beograd	On 21.02.2017 A preparatory meeting was held with the School Team that will accept students from 7 to 11 years of age
Primary School „Rade Drainac“	Palilula	Beograd	8 ASM students from 12 to 16 years
Primary School „Zaga Malivuk“	Palilula	Beograd	
Primary School“ Jovan Ristić”	Palilula	Beograd	7 ASMs (aged 12-16)
Primary School „Branko Pešić“	Zemun	Beograd	23 ASMs (aged 15-17)
School with students' home Agriculture Combine Belgrade	Palilula	Beograd	4 ASMs (Two girls and two boys aged 16-17) who speak Pashto language only, so the Ministry for Education has provided an interpreter
Pre-school Institution Rakovica	Rakovica	Beograd	
Primary School „Olga Petrov“	Palilula	Beograd	

Primary School „Dimitrije Tucović“	Lajkovac	Valjevo	
Primary School „Mile Dubljević“	Lajkovac	Valjevo	
Pre-school Institution „Leptirić“	Lajkovac	Valjevo	So far the work with ASMs has been organized only in the refugee camps of Bogovoda and Lajkovac, and not in kindergarten facilities

**Table No. 6** *Institutions taking part in the Project of Inclusion, Information obtained from the Ministry of Education on 9.04.2017*

The ASMs from the Institute for the Upbringing of Children and Youth “Vasa Stajić” were to attend the school “Filip Filipović” from summer semester 2017 (4th grade, 3 children, 8th grade, one child); and the primary school “Karađorđe” (5th grade, two children), whereas one student was awaiting the decision to attend high school.<sup>1027</sup>

### 3.1. About the programme of inclusion

The initiative came from the CEP in September 2016 and was supported by UNICEF, from its *Education in Emergency* fund. So far, there is only the Professional Instruction prepared by Ministry of Education, which will have to be further revised in order to better respond to the situation on the ground. Therefore, the CEP has initially organized trainings in twelve schools in order to prepare them for the first admissions of ASMs. Afterwards, some of the schools have started to enroll the ASMs at their own pace.

At the time, between 80 and 100 out of 8,000 ASMs expressed their intention to stay in Serbia according to data adopted from the APC. This is relevant because in order to be enrolled in schools, the requirement of prior registration with police and expressed intention to seek asylum in Serbia needs to be satisfied.

Currently, there are no scholarships programmes for ASMs in Serbia. Upon the successful finishing of their schooling in Serbia, they would be issued a diploma. However, that remains problematic since before graduation, the ASMs need to pass state examination, which consists of all the

<sup>1027</sup> Ministry of Education, Paper on education of ASMs, 2017, p.6.

materials learned for eight years in primary school. Hence, an alternative should be offered, such as the creation of adapted tests that would make it possible for ASMs to pass this kind of examination.

### 3.2. Inclusion of ASMs in the School Year of 2017/18

2017 to 2018 was marked with constant fluctuation in the number of ASMs accommodated in collective and transit centers, and, consequently, in the number of minors attending formal education in Serbia. The first group of ASMs enrolled in schools in 2013, in particular in the primary school in Bogovađa.<sup>1028</sup> In 2014 seven more students were included in the educational system in Serbia.<sup>1029</sup> During the 2016/2017 school year, some 30 asylum-seeking children were enrolled in primary school. In May 2017, there were 101 students attending schools in Palilula, Voždovac, Lajkovac, Zemun, Rakovica.<sup>1030</sup> In these locations instruction was realized based on the model comprising of two school classes (in different school subjects) and two workshop classes (language workshops and workshops on other topics), or alternatively two elective courses selected by the student in cases where they could speak English or Serbian.<sup>1031</sup>

ASMs most frequently attend classes in Serbian language and another foreign language, mathematics, geography, biology, and they are also included in extracurricular activities.<sup>1032</sup> During 2017/2018 students continued to spend a part of their schooling time in regular classes with relevant grades to which they were allocated based on their age and they also spent some time attending supplemental classes of the Serbian language course.<sup>1033</sup> In this school year, classes were realized in 45 schools in the Republic of Serbia for the total of 503 ASMs, and for additional 83 students for which classes were organized in collective centers, due to the fact that they tended to stay in these centers for a relatively short time only.<sup>1034</sup>

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<sup>1028</sup> REMIS (a), 2019, p.2.

<sup>1029</sup> REMIS (a), 2019, p.2.

<sup>1030</sup> REMIS (a), 2019, p.2.

<sup>1031</sup> REMIS (a), 2019, p.2.

<sup>1032</sup> REMIS (a), 2019, p.2.

<sup>1033</sup> REMIS (a), 2019, p.2.

<sup>1034</sup> REMIS (a), 2019, p.2.

Please see the tables below:

<b>Territory of jurisdiction of the School Administration</b>	<b>Number of pupils enrolled in primary schools</b>	<b>Number of primary schools in which refugee pupils are enrolled</b>	<b>Number of students enrolled in high schools</b>	<b>Number of high schools in which refugee students are enrolled</b>	<b>Total number of pupils/students</b>
Belgrade	137	16	8	2	145
Valjevo	26	2			26
Novi Pazar	21	1	10	1	31
Kraljevo	13	3			13
Nis	59	6	24	4	83
Leskovac	96	5	4		100
Novi Sad	95	4	12	1	107
<b>Total</b>	<b>447</b>	<b>37</b>	<b>56</b>	<b>8</b>	<b>503</b>

**Table No. 7** *Number of ASMs attending schools in Serbia (September/October 2017/18)*  
*503 in schools and 83 in centers*<sup>1035</sup>

Regarding schools organising classes in refugee centres, please see the Table below and please bear in mind that the number and the breakdown fluctuated on a daily basis.<sup>1036</sup>

<b>Territory of jurisdiction of the School Administration</b>	<b>Number of pupils/students included</b>	<b>Number of primary schools included in provision of support to pupils/students</b>
<b>Sombor</b> (Sombor and Subotica)	55	8
<b>Zrenjanin</b> (Kikinda, Banatska Topola and Zrenjanin)	28	4
<b>Total</b>	<b>83</b>	<b>12</b>

**Table No. 8** *Schools organizing classes in refugee centers*

In the school year of 2016/17, the Minister passed what is known as the Professional Instructions for Inclusion of Refugee/Asylum Seeking Students in the System of Education. These instructions were forwarded to all the schools and it is available on the website of the Ministry of Education, Science and Technological Development, as well.<sup>1037</sup>

<sup>1035</sup> REMIS (a), 2019, p.2.

<sup>1036</sup> REMIS (a), 2019, p.2.

<sup>1037</sup> REMIS (a), 2019, p.2.

In addition, a working group tasked with providing educational support to ASMs in educational institutions was established within the Ministry of Education, Science and Technological Development.<sup>1038</sup> This working group shall address systemic issues and work to provide relevant solutions.<sup>1039</sup> In that respect, school teams were provided with two days' training for implementation of Professional Instructions for Inclusion of Refugee/Asylum Seeking Pupils/Students in educational system in August 2017.<sup>1040</sup> 350 teachers, expert staff members and school principals took part in the training.<sup>1041</sup>

Until 2017/2018, 45 schools in which ASMs were enrolled were provided with UNICEF grants, based on the Support Plan prepared by the school for the realization of curricular and extracurricular activities.<sup>1042</sup> Furthermore, the Ministry of Education has planned and allocated financial means to be used jointly with the Commissariat for Refugees and Migrations, Ministry of Labor, Employment, Veteran and Social Policy and the Ministry of Health starting in January 1<sup>st</sup>, 2018 within the MADAD 2 Project for which an application has been submitted to the European Commission for EU funding.<sup>1043</sup>

Moreover, an organized mentor support to schools, which is provided by the advisors - external collaborators.<sup>1044</sup> It is of particular importance that the educational advisors from nine school administrations, Belgrade, Niš, Valjevo, Leskovac, Kraljevo, Novi Pazar, Sombor, Zrenjanin, and Novi Sad, together with mentors and commissioners for refugees, prepare action plans for support of children, teachers and schools.<sup>1045</sup>

UNICEF, the Centre for Educational Policies and the Ministry of Education prepared brochures that were distributed via the Commissariat for Refugees and Migrations to parents in collective centers.<sup>1046</sup> These brochures contain information about children's enrolment in schools in the following languages: Farsi, Urdu, Arabian, English, Pashtu.<sup>1047</sup> These brochures provided parents with adequate information about possibilities for children's education during the period of their stay in the Republic of Serbia.<sup>1048</sup>

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<sup>1038</sup> REMIS (a), 2019, p.2.

<sup>1039</sup> REMIS (a), 2019, p.2.

<sup>1040</sup> REMIS (a), 2019, p.3.

<sup>1041</sup> REMIS (a), 2019, p.3.

<sup>1042</sup> REMIS (a), 2019, p.3.

<sup>1043</sup> REMIS (a), 2019, p.4.

<sup>1044</sup> REMIS (a), 2019, p.4.

<sup>1045</sup> REMIS (a), 2019, p.4.

<sup>1046</sup> REMIS (a), 2019, p.4.

<sup>1047</sup> REMIS (a), 2019, p.4.

<sup>1048</sup> REMIS (a), 2019, p.4.

Moreover, school administrations of the Ministry of Education organized the distribution of backpacks, school materials and equipment, which was provided by UNICEF, into schools in which ASMs were enrolled.<sup>1049</sup> These materials were only for ASMs and disadvantaged Serbian pupils/students coming from underprivileged families.<sup>1050</sup>

Furthermore, the Instruction on the Protection against Digital Violence and on the need for continuous information for all children on potential abuses and consequences of unauthorized use of video materials on social networks has been forwarded to schools.<sup>1051</sup> Monitoring of pupil/student enrolment in schools and their attendance, as well as of the needs for professional training of educational staff still continues.<sup>1052</sup>

Regarding professional training, in October 2017, a meeting with representatives of schools from the territory of the school administration in Niš and Leskovac was organized in Niš.<sup>1053</sup> Schools exchanged experiences with the process of including ASMs. They also discussed possibilities for further improvement of the inclusion process for ASMs.<sup>1054</sup>

Apart from that, professional training of school staff is continuously provided. In October 2017, 100 school staff in Niš participated in a program entitled Teachers as Leaders in Quality Education for All Children.<sup>1055</sup> In November 2017 in Belgrade, the same program was realized for a total of 120 participants.<sup>1056</sup> The Program was realized by UNICEF, organization Indigo, the Centre for Educational Policies and the Ministry of Education.<sup>1057</sup>

Furthermore, the international organization, Save the Children, in its realization of the Memorandum of Cooperation with the Ministry of Education provided quality support to schools.<sup>1058</sup> This support included providing resources required to conduct research titled, “Safe and Supporting Primary School Environment for Refugee/Asylum Seeking Pupils”.<sup>1059</sup> This research was aimed at determining the needs of the schools, so appropriate support could be provided in the following period.<sup>1060</sup>

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<sup>1049</sup> REMIS (a), 2019, p.4.

<sup>1050</sup> REMIS (a), 2019, p.4.

<sup>1051</sup> REMIS (a), 2019, p.4.

<sup>1052</sup> REMIS (a), 2019, p.4.

<sup>1053</sup> REMIS (a), 2019, p.4.

<sup>1054</sup> REMIS (a), 2019, p.4.

<sup>1055</sup> REMIS (a), 2019, p.4.

<sup>1056</sup> REMIS (a), 2019, p.4.

<sup>1057</sup> REMIS (a), 2019, p.4.

<sup>1058</sup> REMIS (a), 2019, p.4.

<sup>1059</sup> REMIS (a), 2019, p.4.

<sup>1060</sup> REMIS (a), 2019, p.4.



Additionally, UNICEF and the Centre for Educational Policies prepared a special website on which examples of best practices are posted in relation to instruction/classes, along with monitoring results.<sup>1061</sup>

The publication of a Manual for Schools has been prepared, which is the result of experiences of school staff after working with ASMs.<sup>1062</sup> The Manual aims to aid the realization of the Pupil/Student Welcoming Program and for the implementation of the Professional Instructions.<sup>1063</sup> UNICEF was jointly preparing this Manual, along with the Centre for Educational Policies and Niš-based organization, Indigo.<sup>1064</sup> The Manual aims to provide support for school staff, and it is supposed to strengthen their intercultural competencies, to manage and reduce stress levels among the children, as well as to develop and implement the Pupil/Student Support Plan (from the Professional Instructions) for pupils/students who do not speak the language in which instruction is provided, who experienced an intermission in education and who are coming from a different cultural environment.<sup>1065</sup>

Finally, in the school year 2017/2018 the standards and curriculum for Serbian as a foreign language was still in a phase of planning, which was to be drawn up together with the relevant expert institutions and with the Institute for Improvement of Education.<sup>1066</sup> There, projects were prepared with the European Commission and competent Ministries, which were aimed at providing grants to schools.<sup>1067</sup> These grants were meant to provide support from interpreters and advisors - external collaborators, but their recommendations, implementations and results are yet to be seen.<sup>1068</sup>

### 3.3.School Year 2018/2019

The same challenges that were identified before continued in 2018/2019 school year, i.e. the lack of necessary documentation for enrolment, and the lack of insight into previously acquired education and achievement.<sup>1069</sup> Even though the 2017 Professional Instruction suggested enrolling ASMs into school grades based on age, that is, the general recommendation was to place ASMs into peer groups or to ensure that the difference in age was as low as possible, this was not always an easy recommendation to follow.<sup>1070</sup> The challenge remained that reception centers accommodate children who: have been excluded from education for a long time; have gone without education

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<sup>1061</sup> REMIS (a), 2019, p.4.

<sup>1062</sup> REMIS (a), 2019, p.5.

<sup>1063</sup> REMIS (a), 2019, p.5.

<sup>1064</sup> REMIS (a), 2019, p.5.

<sup>1065</sup> REMIS (a), 2019, p.5.

<sup>1066</sup> REMIS (a), 2019, p.5.

<sup>1067</sup> REMIS (a), 2019, p.5.

<sup>1068</sup> REMIS (a), 2019, p.5.

<sup>1069</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 1.

<sup>1070</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 1.

while they have been in transit; have had some form of education, but with frequent disruptions due to moving, in transit countries where they spent a long time; or they are children who were never enrolled in formal education, neither in the country of origin nor in the transit countries.<sup>1071</sup> Therefore, it was challenging to reconcile the differences in knowledge in such diversified groups of pupils.

On the one hand, schools are supposed to meet educational and emotional needs in accordance with student's competencies, difficult living conditions and denials through which they have passed.<sup>1072</sup> On the other hand, it is important that children are motivated and ready to learn.<sup>1073</sup> The Republic of Serbia has adopted a model of inclusion of ASMs into its formal education system. They have done this instead of requiring ASMs to first attend language courses taught in separate classes or schools for migrant children or in reception/transit centers, and, only after mastering the language of the environment, being allowed to enter state schools.<sup>1074</sup> In other words, the complete inclusion of ASMs is designed in the way that the school adapts to the needs of children.

In the school year 2018/2019, in particular until February 2019, 98,22 percent of preschool-aged or elementary-school-aged ASMs who were placed in reception centers were included in the education system.<sup>1075</sup> In addition, young people over the age of 17 also have the opportunity to attend secondary schools, but only where there are free places left and in accordance with their interests at the same time.<sup>1076</sup>

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<sup>1071</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 1.

<sup>1072</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 1.

<sup>1073</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 1.

<sup>1074</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 1.

<sup>1075</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 1.

<sup>1076</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 1.

School Administration Territory	ASMs attending primary school	Primary Schools Admitting ASMs	ASMs attending High school	High Schools Admitting ASMs	Total P.S.+H.S.	Unaccompanied ASMs	Preparatory preschool program
<b>Beograd</b>	<b>109</b>	<b>10+2SEEA<sup>1077</sup></b>	<b>5</b>	<b>4</b>	<b>113</b>	<b>62</b>	<b>0</b>
<b>Valjevo</b>	<b>22</b>	<b>2</b>	<b>7</b>	<b>3</b>	<b>29</b>	<b>1</b>	<b>1</b>
<b>Novi Pazar</b>	<b>0</b>	<b>1</b>	<b>21</b>	<b>1</b>	<b>21</b>	<b>21</b>	<b>0</b>
<b>Kraljevo</b>	<b>15</b>	<b>2</b>	<b>4</b>	<b>1</b>	<b>19</b>	<b>17</b>	<b>0</b>
<b>Niš</b>	<b>19</b>	<b>3+1SEEA</b>	<b>12</b>	<b>2</b>	<b>31</b>	<b>27</b>	<b>4</b>
<b>Sombor</b>	<b>32</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>32</b>	<b>0</b>	<b>0</b>
<b>Zrenjanin</b>	<b>7</b>	<b>4</b>	<b>3</b>	<b>2</b>	<b>10</b>	<b>9</b>	<b>1</b>
<b>Leskovac</b>	<b>37</b>	<b>4</b>	<b>4</b>	<b>2</b>	<b>41</b>	<b>4</b>	<b>3</b>
<b>Novi Sad</b>	<b>59</b>	<b>4</b>	<b>8</b>	<b>1</b>	<b>67</b>	<b>0</b>	<b>9</b>
<b>Total</b>	<b>300</b>	<b>37+3SEEA</b>	<b>64</b>	<b>16</b>	<b>363</b>	<b>141</b>	<b>18</b>

**Table No. 9** Showing data on number of ASMs included in education system and schools admitting them in February 2019

What is unique for this school year is the fact that ASMs aged between 5.5 and 6.5 were also included and started to attend a compulsory preparatory preschool program. In other words, preparatory pre-school programme (PPP) is compulsory for children between the age of 5.5 and 6.5 years in Serbia.<sup>1078</sup> After one year of compulsory PPP, children enroll in primary school at the age of 6.5, and compulsory primary school education lasts for eight years, which is followed by four years of envisaged high school education.

<b>Primary School +Schools for Elementary Education of Adults +University</b>	<b>302</b>
<b>High School</b>	<b>64</b>
<b>Preparatory Preschool Program</b>	<b>18</b>
<b>Total</b>	<b>384</b>

**Table No. 10** Showing total number of ASMs included in education system in February 2019

<sup>1077</sup> SEEA- abbreviation for School for Elementary Education of Adults.

<sup>1078</sup> The Brochure is developed within the project “Support to education of migrant children/ refugees in the Republic of Serbia”, implemented by UNICEF and Centre for Education Policy, with support of Ministry of Education, Science and Technological Development of the Republic of Serbia.

In December 2017, the Manual for the Application of the Professional Instruction was prepared in cooperation with the Office of UNICEF in Belgrade. Together with UNICEF, the Center for Educational Policies and the Ministry of Education prepared brochures that were distributed to parents in collective centers in KIRS in August 2017.<sup>1079</sup> The brochures were about enrollment into Serbia's education system and were disseminated in the following languages: Farsi, Urdu, Arabic, English, and Pashto.<sup>1080</sup> The brochures were provided in these various languages in order to adequately inform parents and guardians about the possibilities of education for children during the period in which they reside in the Republic of Serbia.<sup>1081</sup> One year later, the Ministry of Education carried out parental meetings in reception centers where school administrations and school board advisors handed out brochures and conducted interviews with parents of current and future students.<sup>1082</sup>

It is estimated that until February 2019 some 2,500 ASMs have been successively included in the Serbian educational system.<sup>1083</sup> In November 2017, full-time education was being carried out for all children from collective centers in 45 schools in the Republic of Serbia, 503 pupils in schools, and instruction was realized for 83 children in refugee camps where they stayed for a short period of time.<sup>1084</sup> In December 2018, 454 pupils learned in schools and 59 learned in centers.<sup>1085</sup> Due to migration, the number of students changes on a daily basis, hence in February 2019 there were 384 ASMs receiving education in Serbia.<sup>1086</sup>

Furthermore, teachers were empowered through the training that was implemented in 2018/19 through the MADAD 2 project.<sup>1087</sup> The realization of 28 certified, two-modular trainings that included 765 teachers and professional associates led to their empowerment.<sup>1088</sup> In addition to that, an online training that will have a wider scope of education for staff with topics ranging from anti-discrimination, intercultural education, psychosocial support, individualization, methods of learning Serbian as a foreign language, the concept of migration, acculturation, social psychology, ethnic identity issues, support, and creating a safe and stimulating environment.<sup>1089</sup>

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<sup>1079</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 2.

<sup>1080</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 2.

<sup>1081</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 2.

<sup>1082</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 2.

<sup>1083</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 2.

<sup>1084</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 2.

<sup>1085</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 2.

<sup>1086</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 2.

<sup>1087</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 2.

<sup>1088</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 2.

<sup>1089</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 2.

In parallel with the implementation of the activities of organizing education for ASMs, the Ministry of Education has prepared a project for the use of funds from the Madad Trust Fund, MADAD 2, which started in April 2018 and was supposed to end on June 30, 2019.<sup>1090</sup>

In 2017, 45 schools that admitted ASMs received grants from UNICEF, and in 2018 the Ministry of Education allocated grants for 52 schools in the amount of 6 million EUR coming from the MADAD 2 project (project funds allocated by European Commission for EU funds).<sup>1091</sup> The aim of these funds was to strengthen and support the implementation of the Professional Guidelines for the Inclusion of Migrant Students in Education, and to provide school equipment and didactic materials.<sup>1092</sup> These materials enabled teachers to work better with students who are unfamiliar with the instruction language, and teachers could then produce their own didactic material. ASMs were also provided with their own school supplies to complete activities.<sup>1093</sup> All of this encouraged the cooperation of the school and the local community, the engagement of translators and teachers for the teaching of the Serbian language in the initial period.<sup>1094</sup>

UNICEF, the Ministry of Education and the Center for Educational Policies prepared and edited a special website in 2017 with the web address <https://remis.rs>, where examples of good practice in teaching, tracking results, etc., are published.<sup>1095</sup> The Ministry of Education took over the role to update the data on the website in April 2018, since it receives information on the implementation of the activities within the MADAD 2 project.<sup>1096</sup>

As was previously mentioned, the last school year was the first time ASMs aged between 5,5 and 6,5 were included in the compulsory preparatory preschool program. Once enrolled, these ASMs undergo obligatory systematic health examinations carried out in the health centers, which implements them in cooperation with the Ministry of Health.<sup>1097</sup>

Finally, in cooperation with the Institute for the Advancement of Education within the MADAD 2 project, the Ministry has developed standards and a curriculum for the course of Serbian Language as a Foreign Language, which is currently in the process of being published.<sup>1098</sup> Consequently, training sessions for teachers are under preparation, too.

On the other hand, the organization Save the Children, together with the Ministry of Education with whom it has signed the Memorandum of Cooperation, provided the realization of the research,

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<sup>1090</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 3.

<sup>1091</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 3.

<sup>1092</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 3.

<sup>1093</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 3.

<sup>1094</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 3.

<sup>1095</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 3.

<sup>1096</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 3.

<sup>1097</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 3.

<sup>1098</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 3.

Safe and Supportive Elementary Environment for Refugee / Asylum Refugees Students, which examined the needs of support schools.<sup>1099</sup>

Every child who leaves the system and moves towards the country of their ultimate destination carries with them the bilingual school report, in Serbian and English, with a description of achievements based on inter-subject competencies (and not on the basis of the subject) to be recognizable in other countries.<sup>1100</sup>

#### **4. Project MADAD 2 - EU Support to Serbia in Migration Management**

The aims of education and training in Serbia are set forth in Article 8 of the 2017 Law on the Foundations of the Education System. These aims are, inter alia, developing feelings of solidarity, understanding and constructive cooperation with others, cultivating friendships and developing competencies for understanding and respecting the rights of the child, human rights, civic freedoms and the ability to live in a democratically organized and just society; development and respect for racial, national, cultural, linguistic, religious, gender and age equality, tolerance and respect for diversity, and others.

Bearing in mind the seriousness of the situation in which a large number of migrants who traveled through the Republic of Serbia during 2015 and 2016 found themselves, and due to the Balkan route closure, a certain number of people began to remain in Serbian territory for a long time. As a result, the Ministry of Education, Science and Technological Development has been preparing sustainable solutions in the field education.<sup>1101</sup> The result of closing the so-called Balkan route was that almost 4,000 migrants remained in the Republic of Serbia and most of them were accommodated in reception and transit centers.<sup>1102</sup> It is estimated that more than 40 percent of them are children.<sup>1103</sup>

Currently, most migrants remain in the Republic of Serbia for more than a year.<sup>1104</sup> Hence, the need for humanitarian response has emerged, which means that not only adequate nutrition, child care and health care needed to be provided, but it also became necessary to enable children to attain relevant skills and knowledge, to maintain learning habits and to improve their academic competence.<sup>1105</sup> The Government of the Republic of Serbia has, through the relevant ministries and the Commissariat for Refugees and Migration, and with the support of civil society and

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<sup>1099</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 3.

<sup>1100</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 3.

<sup>1101</sup> MADAD 2, 2018, p. 3.

<sup>1102</sup> MADAD 2, 2018, p. 3.

<sup>1103</sup> MADAD 2, 2018, p. 3.

<sup>1104</sup> MADAD 2, 2018, p. 3.

<sup>1105</sup> MADAD 2, 2018, p. 3.

international organizations, made significant efforts in order to adequately respond to the needs of migrants, primarily children, and therefore, adopted a series of measures aimed at improving the information of migrants about the services at their disposal.<sup>1106</sup>

In the period from January 1<sup>st</sup> to November 7<sup>th</sup> 2017, a total of 6,391 persons entered the Republic of Serbia, while 5,282 persons expressed their intention to seek asylum.<sup>1107</sup> In order to organize the institutional and efficient response to the humanitarian crisis and needs, the Government of the Republic of Serbia established a Working Group for solving the problem of mixed migration flows, thereby ensuring the coordination and direction of the work of competent authorities in the field of migration.<sup>1108</sup> At the same time, the Government has established a regular adoption of a response plan in the event of an increased migrant influx that should ensure efficiency and effectiveness in responding to the possible increased number of migrants in the Republic of Serbia.<sup>1109</sup>

However, due to lack of sufficient funding, significant support to the Republic of Serbia was realized through the Madad Trust Fund - MADAD 1 project.<sup>1110</sup> This project included intensive support to health care through cooperation with local health centers, as well as outlining conditions for providing health care and provision of accommodation capacities in reception and transit centers. Finally, the project also strengthened the operational capacities of institutions which were under increased pressure.<sup>1111</sup>

In addition, the MADAD 2 project was created as an upgrade to the experiences and results from the previous MADAD 1 project. It aimed to expand support to the migrant population and access to education in order to address needs within the current migration context.<sup>1112</sup> The funds from this project are aimed at not only more complete coverage of the network of reception centers in Serbia, but also inclusion of other activities in the field of health care and education in order to meet the needs of long-term stay migrants in Serbia.<sup>1113</sup> To put things differently, this new framework includes activities that will include not only the most urgent needs of the migrant population, but also to increase and improve the quality and quantity of services for the migrant population during their long stay in the Republic of Serbia, with a special focus on children and unaccompanied minors.<sup>1114</sup> Finally, MADAD 2 was created to address structural issues in terms of improving and managing reception centers, providing access to quality education, and accessing health care, with an emphasis on meeting children's needs.<sup>1115</sup>

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<sup>1106</sup> MADAD 2, 2018, p. 3.

<sup>1107</sup> MADAD 2, 2018, p.3.

<sup>1108</sup> MADAD 2, 2018, p. 3.

<sup>1109</sup> MADAD 2, 2018, p. 3.

<sup>1110</sup> MADAD 2, 2018, p. 3.

<sup>1111</sup> MADAD 2, 2018, p. 3.

<sup>1112</sup> MADAD 2, 2018, p.3.

<sup>1113</sup> MADAD 2, 2018, p.3.

<sup>1114</sup> MADAD 2, 2018, p.3.

<sup>1115</sup> MADAD 2, 2018, p.3.

The general objective of the MADAD 2 project is to respond to the needs of migrants and asylum-seekers in the Republic of Serbia through support to institutions, including improving accommodation and service provision. On the other hand, the specific objective relates to the field of education, in particular to provide adequate health and education services in order to effectively respond to the needs of migrants and asylum-seekers in the Republic of Serbia.<sup>1116</sup>

Activities related to the field of education within this project include development of the Serbian language as a foreign language. One way of doing this is by creating the teaching program, Serbian Language as a foreign language. This activity brought together experts from schools as well as from four Serbian Language Centers.<sup>1117</sup> Furthermore, training for the implementation of the course's curriculum will include all interested schools with the aim of improving the education employee's capacities for work with pupils of migrant background and asylum-seekers.<sup>1118</sup>

### Improving the capacity of educational institutions to include migrant students in the education system in the Republic of Serbia

This activity is focused on the sustainable integration of children of migrants into the system by enhancing professional competencies of teachers and supporting schools attended by migrant students.<sup>1119</sup> The MADAD 2 project adopts the term migrant children when referring to ASMs in the education system. The *term migrant* can be considered problematic, as there is an entire discussion/controversy concerning the *migrant* term. As stressed by the UNHCR on a number of occasions, using the two terms *refugees* and *migrants* interchangeably can have serious consequences for the lives and safety of refugees.<sup>1120</sup> The blurring of these two terms withdraws attention from the specific legal protections that refugees need.<sup>1121</sup> In addition, it can reduce public support for refugees and the institution of asylum at a time when such protection is needed by a greater number of refugees than ever before.

Therefore, the term *refugees* is reserved for people fleeing war and persecution across international borders.<sup>1122</sup> The term *migrant* represents people on the move for reasons that are not covered by the legal definition of refugees.<sup>1123</sup> *Migrants* are not exposed to direct threats of persecution or death, but migrate mainly to improve their lives by finding employment, or, in some cases, for

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<sup>1116</sup> MADAD 2, 2018, p.4.

<sup>1117</sup> MADAD 2, 2018, p.4.

<sup>1118</sup> MADAD 2, 2018, p.4.

<sup>1119</sup> MADAD 2, 2018, p.4.

<sup>1120</sup> UNHCR (f), available at <http://www.unhcr.rs/opste/razno/stav-unhcr-izbeglica-ili-migrant-sta-je-ispravno.html> (last consulted 08.04.2019).

<sup>1121</sup> Ibid.

<sup>1122</sup> Ibid.

<sup>1123</sup> Ibid.



education, family reunification or other reasons.<sup>1124</sup> It is also important to stress that unlike refugees who cannot safely return to their homes, migrants do not face such obstacles to return, meaning that if they choose to go back home, they will continue to receive the protection of their country.<sup>1125</sup>

Apart from online and offline training school staff receive as a benefit from this project, assignment of grants and additional support to children and schools will be provided through the engagement of eighteen volunteers who will undergo one day of training to work with the asylum-seeking population.<sup>1126</sup> In particular, volunteers will participate in the organization of transport and accompanying children from reception centers to school and back, then, through support of teachers in accordance with the needs of the school, support for the organization of extracurricular activities and the implementation of non-formal education programs.<sup>1127</sup> Non-formal education programs are aimed at contribution to the development of key competences for lifelong learning in order to facilitate continuous education for children by acquiring relevant knowledge and skills.<sup>1128</sup>

Eventually, monitoring student achievement and well-being in schools will be managed by engaging ten mentors - external advisers.<sup>1129</sup> This monitoring will enable continuous inclusion of ASMs and the quality of the school's work in which these pupils are educated can be upheld.<sup>1130</sup> The work of the mentor should improve the documentation and analysis of measures that are examples of good practice, program performance evaluation, and mentors will provide consultations and exchange experiences and knowledge.<sup>1131</sup> All information connected to the MADAD 2 project and its results is being published on the webpage [www.remis.rs](http://www.remis.rs).

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<sup>1124</sup> UNHCR (f), available at <http://www.unhcr.rs/opste/razno/stav-unhcr-izbeglica-ili-migrant-sta-je-ispravno.html> (last consulted 08.04.2019).

<sup>1125</sup> Ibid.

<sup>1126</sup> MADAD 2, 2018, p. 5.

<sup>1127</sup> MADAD 2, 2018, p. 5.

<sup>1128</sup> MADAD 2, 2018, p. 5.

<sup>1129</sup> MADAD 2, 2018, p. 5.

<sup>1130</sup> MADAD 2, 2018, p. 5.

<sup>1131</sup> MADAD 2, 2018, p. 5.

## Chapter VI

### Field Data

Now that existing positive legislation, detected challenges, and adoption of relevant instructions for admission to schools have all been discussed, this Chapter presents data collected in the field, which is aimed not only at the identification of the examples of good practice or the elements of good practice in a domestic Serbian aspect that so far emerged or existed before any steps were taken by the state, but also to critically analyze the theory and practice in order to contrast them against criteria designed to evaluate the success of a state in granting the right to education to ASMs.

### 1. Field Visit to Educational Facilities Admitting ASMs in 2017

#### 1.1. Primary School “Branko Pešić” in Zemun for the education of adults

Primary school “Branko Pešić” is attended by 300 minors under the age of 15 as well as 350 students up to 8th grade.<sup>1132</sup> There are fifteen classes in which minors up to 15 years old are placed and three classes in which students older than 15 are placed. The majority of minors attending the school are Roma children, children belonging to marginalized groups in Serbia, refugees from Kosovo, and Serbian children from dysfunctional families (e.g. parents are in prison, cases of child neglect, child abuse, etc.). The minors usually come from large families, or those made of eight or more family members.

In April 2017, 35 asylum-seeking minors whose ages ranged from 12 to 18 attended “Branko Pešić”, and there were 58 ASMs who went through the school since the beginning of the inclusion.

To see some dynamics in enrollment and drop-outs per gender, please see the table below.

Date	Boys	Girls
22.12.2016	19	3
28.12.2016	18	3
29.12.2016	16	1
19.01.2017	15	0
22.02.2017	16	0
15.03.2017	30	0

**Table No. 11** *Branko Pešić School Attendance per Dates and Gender*

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<sup>1132</sup> Information about the education of ASMs in this particular school was obtained during the visit to the school in April 2017, through the interviews with the respective school staff and ASMs.

Regarding the curriculum students engage with in school, students attend six lessons of Mathematics and Serbian language as a foreign language. At the moment, they do not attend the lessons of Arts, P.T. (physical fitness training), or Music. The reason for not attending P.T. classes is that ASMs frequently lack permission of their parents to attend them, usually because they only have one set of clothes to wear. If students were to take P.T. classes, they would need to wash their clothes every night, and, as they are very often not dry by the morning, students would be prevented from attending school.

Similarly, the problem with taking Arts classes is that children have to buy necessary materials such as collage paper, tempera paint, watercolors, and crayons by themselves. This means additional expenses for the parents that they cannot afford. This can result in feelings of shame, ultimately leading to more children dropping out of school.

Minors are typically aged nine and a half or ten years old when they enroll in the first grade at “Branko Pešić”. The rest of the domestic population enrolls into primary schools at the age of six or seven. However, this school is often criticized by international organizations such as UNICEF for admitting only Roma children in the sense that the school is used by the state for implicit segregation.

On the other hand, without “Branko Pešić,” these children would likely stay out of the education system altogether, as no alternative solution exists at the moment. Furthermore, minors are being enrolled even if they do not have birth certificates and are able to finish two school years in one calendar year. Some 50 to 60 percent of them enroll in high school afterwards. Usually students enroll in high schools devoted to trades such as mechanical engineering, traffic, agriculture, floriculture, hairdressing, and so on.

Students attend three school shifts depending on the grade they are in:

- I shift: from 8 am - 13:15 pm (5th to 8th graders)
- II shift: from 13:20 pm - 16:35 pm (1st to 4th graders)
- III shift: from 17 pm – 19 pm (adults)

Regarding the placement of ASMs into the school, they attend the first shift, but they start at 9:45am because breakfast is provided in the refugee camps, as the school is unable to offer the same option. Similarly, they leave the school before 14pm, which is when lunch is served in the refugee camp. Currently, all ASMs attending this school come from a refugee camp in Krnjača. They are provided with transportation to and from the school, which was initially financed by the UNHCR and is now covered by the International Rescue Committee (IRC).

The admission of ASMs to this school began in December 2016, and was initially attended by unaccompanied asylum-seeking minors from Afghanistan. They attended only two workshops a

day. The next group of ASMs enrolled in January 2017, when minors were placed into respective classes. In particular, they were allocated to eight different classes from 5th to 8th grade. Three ASMs were allocated per class based on a previous knowledge check-up and in accordance with age group assessment. Their school curriculum consisted of Serbian language lessons and natural science lectures in Biology, Chemistry and Physics. Recently, ASMs have been placed into classes based on their understanding of Serbian language and having someone to assist them with class participation. This way they are not separated from domestic students except for when attending Serbian language as a second language.

Students attend two lessons of Serbian language per day and find the rule of ‘one sound/voice - one character’ (in Serbian: jedan glas – jedno slovo) very easy. The Serbian alphabet consists of thirty letters and its main characteristic is that it is phonetic, which means that one letter corresponds to one voice. Though ASMs use exclusively Serbian Cyrillic in their lectures, it may be more practical to teach them the Latin alphabet since it is being used in the majority of European states including Serbia itself. This would also respect the reality that students may wish to continue their journey after they attend classes in Serbia. The programme to teach Serbian as a foreign language has been developed by the school.<sup>1133</sup> Two of the teachers, namely Ljilja and Darko have successfully finished the training course organized by UNICEF and they teach Serbian language as foreign language as well.

At one point, the initiative to have ‘peer mentors’ in order to ensure better inclusion of ASMs was proposed. However, it was not carried out because all of the minors were well received and adapted well to the new school environment.

Seven out of twenty one ASMs who were enrolled at the beginning of the programme had never attended a school before. All of the minors expressed their gratitude for the education they were receiving as well as for the school materials they were provided with. In addition, a translator provided by the German organization, ADRA, has been provided for Farsi and Pashto.

From the beginning of the programme, four ASMs have been transferred from the primary school, “Branko Pešić,” into the high school, Poljoprivredni kombinat Beograd (PKB). One student is from Afghanistan, two are from Ghana and one is from Cameroon. Between 7-10 ASMs have crossed the border and did not continue their education in Serbia, whereas one was detained in Hungary, according to the findings of the school.

ASMs can sometimes lack motivation to continue their education in Serbia and do not show up at lectures, so teachers from “Branko Pešić” have employed the tactic of going to the refugee camps

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<sup>1133</sup> Please see the exercise sheet from the Serbian language workshop in Annex V.

to bring them sweets and persuade them to come back. Devoting their attention and showing students that there is someone who cares means a lot to the ASM students.

Furthermore, the school has organized trips to the zoo, Kalemegdan and other historical sights. The plan is also to organize a sports day, and special attention has been paid to religious holidays celebrated in the countries of origin. The school principal finds that there is good cooperation with the Center for Social Work, and notes that ten students have guardians named Dijana and Miroslav. The Red Cross Organisation regularly donates clothes, sweets for Easter, hygiene items, and so on. Cooperation with the Ministry of Human Rights is said to exist only on paper.

There is no information suggesting any ASMs have been returned from Germany to Serbia based on the readmission agreement, only some domestic Roma students. Because of the assumption that ASMs want to move forward with their journey towards Western European countries, the school was the first one to have developed a practice to issue them a *school report*, which contains detailed information about the education they received in the past month.<sup>1134</sup> On the other hand, ASMs who are coming to Serbia usually do not have any diplomas or school certificates with them. Furthermore, there is neither an official preparation programme, nor peers' assistant programmes to facilitate their integration into the education system.

However, in order to attend the school, they have to be registered with police as well as to have expressed their intention to apply for asylum in the Republic of Serbia. It has been noticed that some minors have received education in Greece and have a good knowledge of the English language. Moreover, minors are familiar with different versions of curriculum in their countries of origin; these are very often religiously oriented and may not have included subjects such as Geography.

Therefore, it is no surprise that ASM students cannot identify the four cardinal directions, even though they have crossed some 6,000km on their way to Europe. Regarding religious teaching, "Branko Pešić" offers religious courses as well. Islam is offered twice on Monday and Tuesday during the 3rd and 4th classes, and there is an organized visit to the mosque on Fridays.

According to the school staff, ASMs are under pressure from their families to continue their journey to Switzerland, Germany or France, due to popular belief that these countries have good social programmes. ASMs do not have their input when it comes to development within a school curriculum, however they do have a say in the organization of school recitals. Noteworthy is that none of the minors have expressed the intention to find a job in Serbia.

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<sup>1134</sup> Please see exemplary school report in Annex VI.

## 1.2. Primary school “Jovan Ristić” Borča

The primary school “Jovan Ristić” in Borča was built in 2010.<sup>1135</sup> 1,083 pupils attend the school, only 13 of which are ASMs. However, the school offered to enroll around 450 ASMs starting from winter semester 2017.

Please see the table below for more statistical information. In addition, please see the Annex IV.

Primary school grade	Number of ASMs attending
8th grade	4
6th grade	2
4th grade	5
2nd grade	2

**Table No. 12.** *Number of Students attending the primary school Jovan Ristić in 2017*

This school offers courses in four foreign languages: English, German, Russian and Chinese. Regarding religious studies, students can take either Islamic or Orthodox Christian lectures.

“Jovan Ristić” admitted only a few unaccompanied ASMs in December 2016, and from January 2017 it started enrolling students who were appointed by the Ministry of Education. They attend most, though not all of the regular curriculum; classes include Mathematics, Serbian Language, P.T., Arts, Technical Education, and Natural Science. The first group that was admitted to “Jovan Ristić” was comprised of seven Afghani boys aged between 13 and 15.<sup>1136</sup> They were all unaccompanied, hence had a guardian appointed by the Center for Social Work. The second group consisted of eight girls and five boys aged from 7 to 17. They were all accompanied minors, of various schooling backgrounds. Sixteen of them came from Afghanistan and one from Syria.

In addition, the first group of enrolled students changed classes in order to better suit their personal interests, whereas the second group always attended classes with the same class of students that they were admitted with. The latter led to some difficulties, largely because it was impossible for one translator to be in multiple places at one time.

In order to make ASMs feel more comfortable, ASMs were always paired with each other when placed in classes, and brothers and sisters were always placed in classes during the same school shift. ASMs arrive to school after having breakfast in the refugee camp, and leave before lunch time. They must figure out their own transportation, so they typically use public transportation.

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<sup>1135</sup> Information about the education of ASMs in this particular school was obtained during the visit to the school in April 2017, through the interviews with the respective school staff and ASMs.  
CEP, 2017, slide No.3.

<sup>1136</sup> CEP, 2017, Slide No.5.

They are not given the benefited transport tickets, but in the event that they are caught traveling without a valid ticket, they can show their refugee camp pass and consequently get away without having to pay the penalty.

The German organization ADRA has provided a translator for Farsi, and in the refugee camp German language workshops are offered. The school has organized a special event for celebration of their New Year Holiday on the 21<sup>st</sup> of March 2017, at which they handed out presents. The Center for Social Work is no longer in charge of any issues related to ASMs other than school administration, which is expected to adopt the Guidance on how to proceed with the education of ASMs. In April 2017, there were no school reports that minors could require before continuing their journey.

The Guidance was developed at the end of summer semester (please refer to the Annex III to see the School Report Sample). Moreover, ASMs are still not taking part in the evaluation system. On the other hand, there are no minors returned from Germany.

One interesting bit of information when it comes to placement into school grades based on age of the student is the following example. The 8th grade welcomed four girls and one boy. It is assumed that they are originally from Afghanistan, and they speak the Persian language. The girls appear to be fluent in English language, too, and are solving complex mathematics equations easily. Their mental and physical appearance does not match the grade they have been placed into, the 8th grade of primary school (attended by 15-year-olds).

In other words, judging by personal observation, these girls could be around 18 years old. The assumption was confirmed by a math teacher who prepared a test for her own purposes in order to prepare better materials for the lectures attended by ASMs. The result showed that they solved tasks that high school students in Serbia do in the final year of high school (19-year-olds).

All interviewed ASMs expressed their frustration that they had to wait seven months (the duration of their stay) to be included into the education system in the RS. They said they want to be transferred to Germany, due to the promising education system found there.

### 1.3. Primary school “Rade Drainac”

Primary school “Rade Drainac” is attended by seven ASMs coming from Afghanistan.<sup>1137</sup> They are allocated in 2nd, 3rd, 4th and 8th grade based on their age, and arrive at school after the 2nd class since they have breakfast in the camp Krnjača. Students here attend the 5th and 6th classes

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<sup>1137</sup> Information about the education of ASMs in this particular school was obtained during the visit to the school in April 2017, through the interviews with the respective school staff.

every day and they sometimes attend 3rd and 4th. All ASMs are well received in the school; there were no cases of discrimination reported. There was a special event organized to welcome them. UNICEF is also very active through its project “School Without Violence.”

The ASMs attend lectures in Mathematics, English language, Serbian language, Arts, the World Around Us, Music, Islamic religious lectures, and the 5th class is always some kind of workshop. Those attending 5<sup>th</sup> to 8<sup>th</sup> grades, take part in Biology and Technology lessons. It has been noted that ASMs are making progress very fast and are very devoted to learning. There were no cases of returns of ASMs from Germany based on the re-admission agreement, though there were cases concerning Roma children. In that case, the policy of the school is to welcome back the student and place him/her into the grade that his/her age generation has reached. To put things differently, if he/she has left when he/she was in the 4th grade and returns after two years being in Germany, he/she will be placed in 6th grade upon his/her arrival back.

This placement could cause serious issues in case of inspection, as there is no proper evidence that the child has acquired the necessary knowledge and there are no marks or other necessary paper work following the progress of the child. In addition, the burden is also placed on the child to catch up with what can be a difficult school curriculum.

The ASMs who attend “Rade Drainac” are provided with transportation from the camp in Krnjača to get them to and from school. This is financed by the German organization, ADRA. Other NGOs are not involved in the work with ASMs in this school. The cooperation with the Center for Social Work is also said to be unsatisfying. It is the Ministry of Education that assigns ASMs to this school, where they are included in the regular school curriculum. This means there have been no cases of segregation. So far, no one from abroad has contacted the school to require any information concerning the ASMs that used to attend it.

When the first group of ASMs was admitted to “Rade Drainac,” they stayed only for a month. The group that started in March 2017 is still attending the school. The system of issuing them a school report has still not been developed. Hence, this school does not include the ASMs into official school paper work, and they are not being rated the same as the other students. However, it is possible to include ASMs into tailoring the school plan and programme for the next year.

#### **1.4. Refugee Camp Krnjača**

So far, Krnjača is the only refugee camp that sends ASMs to schools.<sup>1138</sup> The families placed in this refugee camp, after a long period of trying to persuade them, have accepted the enrolling of their children into Serbian schools. Minors are sent to schools in the municipalities, Krnjača,

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<sup>1138</sup> Information in this part of the dissertation was obtained during the visit to the refugee camp in April 2017, through the observation and monitoring mission and interviews conducted with the respective refugee camp staff.



Palilula, Ovča and Borča. The camp ensures ASMs from the same family or the same speaking region go to the same school.

Volunteers take children to schools, though they simply accompany them on public transportation. ASMs do not have valid transportation tickets. It is assumed that if caught by the control they would not be obliged to pay the fine, but will be let free instead. ASMs who are enrolled in the school “Branko Pešić” in Zemun, have organized transport, which is paid for by the IOM.

One of the problems noted by the director of Camp Krnjača is that ASMs quickly drop out of school, or they do not come back to the Center. Apparently, they lack motivation, possibly due to economic reasons, and refuse to go to school. Furthermore, there are families in the camp who are not even registered, which seriously compromise their right to education. Speaking of statistics, there are 70 unaccompanied asylum-seeking minors and 400 asylum-seeking minors accompanied by a parent/guardian. The majority come from Afghanistan, Iraq and Syria and typically stay for around six to seven months. Regarding the schooling in the camp itself, certain programmes are offered. In particular, ASMs can attend lectures of Serbian language, English language, History, Geography, or workshops in handicrafts and beauty. Furthermore, free Internet access is provided in facilities named Social Cafe and Internet Cafe.

There are also various activities organized by NGOs, such as a football tournament. However, the ASMs have shown an equal amount of indifference towards these activities and, for instance, did not want to wait for the winner to be announced and awards to be handed out.

Camp Krnjača accepts ASMs to come back even when they have left the camp without authorization. Regarding the issue of human trafficking, it has been assumed that there are human traffickers present in the camp, but it is very hard to establish who they might be. ASMs are unwilling to cooperate in turning them in. Furthermore, there have been cases of child abuse and child negligence, hence the Center for Social Work and a Home for Orphans had to be utilized.

There are psychologists, pedagogics, school staff, and translators present in the camp as well as medical staff. In addition, there are two child protection officers and one coordinator. Additionally, Camp Krnjača has assigned facilities to the Danish Refugee Council, which has developed a project called “Child Friendly Space” in partnership with UNICEF. These organizations participate in generating the lists of minors taking part in the education system, follow their results and organize various workshops on a daily basis. Regarding student’s placement into schools, they have noted that there is a mismatch around one year, i.e. the ASMs are typically placed into classes that do not match their stated age.

Finally, other refugee camps do not participate in the program of integration and placement of

ASMs into public schools. They only facilitate some kind of non-formal education activities to take place in these camps. Please see the Table below.

Camp	Capacity	NGO providing NFE
Adaševci	1000	SOS Dečje Selo
Šid	600	Danish Refugee Council
Principovac	250	SOS Dečje Selo
Krnjača	1000	Danish Refugee Council, Caritas, UNHCR
Preševo	1500	Family Corner, Youth Corner

**Table No.13** *Providers of Non-Formal Education in Refugee Camps*

## 2. Field Visit to Educational Facilities Admitting ASMs in 2018

### 2.1. Primary school “Jovan Ristić”

The non-governmental organization ADRA is still, in 2018, actively present in Jovan Ristić.<sup>1139</sup> They provide for transportation of ASMs from Camp Krnjača to the school and back. In particular, ADRA covers transportation to seven schools as of May 2018, these being primary schools “Stefan Dukić”, “Vasa Pelagić”, “Jovan Popović”, “Jovan Cvijić”, “Olga Petrov”, “Rade Drainac”, and “Jovan Ristić.”<sup>1140</sup>

In addition, ADRA provides assistants, pedagogues, psychologists, and a translator from Persian to English and Serbian language. These assistants are present during lectures so they can issue the necessary instructions.

According to suggestion from the Ministry of Education, Serbian language dominates, and there is an insistence that it is used in classes. Furthermore, two to four lessons of Serbian language per school week are compulsory for ASMs.

In the course of one year, there were no ASMs returned from other EU countries based on readmission agreements. On the other hand, students from the last year managed to continue their journey and reached Germany, Switzerland and Sweden.<sup>1141</sup>

The preparatory program is still missing, apart from the preparations that NGOs offer. That unofficial preparation refers to cultural issues such as students knowing they should stand up when the teacher shows up, to raise the hand in order to ask a question, etc.

<sup>1139</sup> Information obtained during the field visit to the school in 2018 through interviews with respective school staff.

<sup>1140</sup> Information obtained from ADRA recruited psychologist present at the primary school “Jovan Ristić”.

<sup>1141</sup> Information obtained from deputy-director during the interview.

The school has tried to organize teacher-parent meetings, however no one from ASMs' parents attended, even though transportation was provided. The initiative was introduced in order to bring newcomers closer to the domestic population, ensure better understanding among different cultures and better integrate ASMs into the Serbian education system.

“Jovan Ristić’s” exceptional cooperation with the UNHCR helps the school work things out with ASMs' parents when they do not approve of their children going to school. In these instances, the UNHCR applies pressure, telling parents they will not receive necessary help if students do not attend school.

On the other hand, parents sometimes sell the help they get from the UNHCR. One example is a whole new bazaar on Kamenička Street in Belgrade, where asylum seekers try to sell the things they received from the UNHCR. Bearing in mind afore-mentioned, when parents will not let their children attend the school, the school reports this to UNHCR that further takes measures or in other words “threatens” it will not hand the help in goods or money to them. Basically, asylum seekers receive financial help, as well, i.e. credit card containing some money two times a month (six-eight thousand RSD).

A few of the questions staff of camps try to address are maintaining a record of who is in the camp, as well as if trafficking is an issue. Asylum seekers that are being accommodated in state-run refugee camps are obliged to report their presence every day to the staff, hence they usually contemplate crossing the border on weekends. There have also been cases where the psychologist established that ASMs were not accompanied by a parent, but that did not necessarily mean that they were victims of human trafficking.

ASMs in “Jovan Ristić” receive their curriculum weekly, the teachers are generally said to be enthusiastic and ADRA provides additional Serbian language teachers to this school. Their name and birthday, or the personal data they would have provided to the police, is recorded in a daily register book. Regarding the grading system, they only get marks in the subjects they are good at.

Similar to the other schools we have seen, ASMs are being placed in classes based on their reported age and stay in school around half a year.

## **2.2. Primary school “Jovan Cvijić”**

There are 250 students enrolled in this school, 28 percent of which are Roma.<sup>1142</sup> They come from the Roma slum known as “Deponije”. Hence, some of the issues that appear in primary school “Jovan Cvijić” are related to segregation. Because the percentage of Roma students is so high, Jovan Cvijić requested help from the Ministry of Education so as to avoid classes being formed with just one nationality, which would constitute segregation. Therefore, the Ministry

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<sup>1142</sup> Information about the education of ASMs in this particular school was obtained during the visit to the school in June 2018, through the interviews with the respective school staff.

placed some Roma students in neighboring schools, thereby avoiding segregation at “Jovan Cvijić.”

ASMs have attended this school since April 2017. They are placed in this school because of a decision that the Ministry of Education makes, which is age based. Six ASMs are registered at “Jovan Cvijić.” However, at the moment only two ASMs attend it since the other family is believed to have crossed the border. There were three boys and three girls placed in this school. Three of them attend third grade, one girl attends second grade, and one boy is enrolled in first grade. All the children are Afghani nationals and were placed in Camp Krnjača.

ASMs here are not recorded in the school’s official registry book, but rather in a specially made register for this occasion. They do not get marks, but rather a narrative report that is shared with ADRA.

The school principal finds the ASMs motivated and evaluates their talent for painting as noticeable and exceptional. It appears that they are very good in singing, dancing and mathematics, too.

The school has developed a special plan of support for ASMs that includes a unique curriculum to fit their needs. These support plans enable them to arrive at school after breakfast and leave before lunchtime. ASMs attend subjects of craft such as arts, music lessons, technical education, in addition to English language lessons, Serbian language, French language, P.T. and Informatics.

Moreover, the school has organized some extra-curriculum activities, such as a sightseeing trip to Belgrade, where its students were guests on a TV show called Beogradska razglednica.

Serbian language lessons are held in small groups in order to teach it as a foreign language, due to the fact that regular lessons are adjusted for mother tongue speakers.

The only identified problem in this school is a language barrier. That is to say that culturally there are no issues; on the contrary, it seems that ASMs fit in just fine. Moreover, they express special wishes regarding school curriculum and get the chance to tailor it according to their wishes. Nevertheless, the school principal notes that the ASMs see this school and country as a transit one, hence there is no real determination to learn the domestic language.

The school has not reported any incidents based on race or cases of discrimination. Furthermore, the school principal is satisfied with the relationship with ASMs’ parents. There were no cases of returns from other EU countries.

The school has received a grant and from that money has bought a laptop, a projector and school supplies. The grant was a donation that was ensured through the Center for Education Policy, and it was granted through the project of inclusion of asylum seekers/refugees on a territory of the RS.

Several NGOs are present at this school: Save the Children, ADRA and the Center for Interactive Pedagogy. There is one Persian translator present in the school from time to time, and organized transportation is provided.

Finally, Red Cross Palilula provides free snacks for ASMs in this school as well as for all other pupils, whereas UNICEF has provided free backpacks and school supplies for all pupils.

### 2.3. High school for textile design

This school was attended by five ASMs who come from three different families.<sup>1143</sup> In particular, the students were a brother and sister pair, two sisters and one seventeen-year-old boy. Eventually, the seventeen-year-old is the only one left attending this school and is enrolled in the high school's first grade. The classes usually consist of 20 to 21 students.

The ASM takes school seriously and sees himself staying there. However, even though the school has invested effort in his integration, there are still barriers that remain uncrossed, such as previous education degree recognition. This prevents him from being registered in the official school registry.

Furthermore, the boy did not get by in the refugee camp, so he has now found himself accommodated in Refugee Service Jesuit, where he has certain obligations, e.g. to attend religious trips, obey house rules (he has to report home by 6 pm, etc.) and so on. These add stress to fulfilling his school obligations.

The school started participating in the program of inclusion from 2017 and the curriculum is mirrored in attendance of certain subjects. From the second class of the day they would take four classes a day. However, the only ASM student that is left in this school now attends all subjects, or in other words a regular curriculum. This is important since he wants to get a school diploma.

At the moment the school report is prepared by a school pedagogue in the English language. This person is, at the same time, in charge of anything that has to do with ASMs. The school report is issued to the ASM upon their departure. It is descriptive and contains information that all teachers have noted respectively. Additionally, the reports are being sent to the coordinator of the program, Melita, on a monthly basis.

Moreover, the ASM receives all reading materials in the English language, which are later translated in the Serbian language for him. Eventually he has the right to take an oral examination in both languages, as he pleases.

When the decision of inclusion was made, teachers were informed at teacher meetings, the parents were informed at a parent-teacher-organization (PTA) meeting, and children were informed during school parliament. Afterwards, the reception was organized. However, there is no organized

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<sup>1143</sup> Information about the education of ASMs in this particular school was obtained during the visit to the school in May 2018, through the interviews with the respective school staff.

transportation from camp to school and backwards. Moreover, there is no translator present in the school, as the Ministry of Education has assessed that as unnecessary.

There were no cases of racism or discrimination. On the contrary, students were thrilled to have peers from different countries and have accepted them well.

The Center for Education Policy assigns funds that are further used for school supplies to be bought, such as rulers, threads, needles, tempera, brushes, books, etc.

The only NGO active in this school is Refugee Aid Serbia, and they provide additional help in subjects like mathematics and painting. More NGO presence is not really necessary, as the school itself provides enough support. The school has managed a good contact with a pedagogue from the Refugee Service Jesuit.

### **Critics expressed by school staff**

There are no funds targeted for inclusion, and no bonuses are offered to school staff who are overburdened by the additional task of integrating ASMs. Better cooperation with the Ministry of Education is needed, domestic students are said to be discriminated against since they do not enjoy the same benefits as ASMs, and there is a need for extra school staff. The Center for Social Work is not active, nor has the legal guardian ever come to the school, and local administration is passive as well.

### **Transit country**

Even though ASMs find Serbia as a peaceful and welcoming country, they nevertheless stress in their talks with school staff that they want to continue their journey to Western countries. Apparently, in Serbia they have found excellent football buddies, but an absence of opportunities to find proper jobs in their field of study is concerning. They have developed a feeling that the only chance to find employment is to work in a boutique. Furthermore, ASMs receive information from their peers who have already reached Western countries, informing them of better life opportunities. Of particular note in these messages from peers settled in Western countries is that they do not live in camps, but rather in provided apartments.

This results in students who are unmotivated to learn the Serbian language and complain about transportation and accommodation.

## 2.4. Primary school for education of adults “Đuro Salaj”

ASMs who attend this school are coming from refugee camp Bogovađa and they attend lectures in the school department located in Lazarevac.<sup>1144</sup> They have been well accepted, though there was some resistance from the locals at the beginning.

This school is suitable for adults that never had a chance to attend school as well as for those who have dropped out of school. Therefore, certain cycles exist to enhance degree acquisition. For instance, the first cycle lasts one year, and enables students to finish the first four years of regular schooling in Serbia in one year.

In October 2017, the school developed an action plan for the integration of asylum-seeking minors into the Serbian education system for 2017/2018. Hence, in April 2017 the first ASMs were admitted to the school. The rest of the students were informed about this on their classes with the class teacher, generally held once a week.<sup>1145</sup>

Upon their admission, ASMs were assisted by their representative from the Asylum Protection Center, who further explained to them the foundation of Serbian education system.<sup>1146</sup> Since the Ministry of Education has suggested a period of adaptation from two weeks to two months, and this period matched the end of the 2016/2017 school year, the period of adaptation was prolonged until the end of the school year. This reduced the stress among ASMs and made the whole process more spontaneous.<sup>1147</sup>

Due to the lack of school diplomas and proof of previously acquired levels of education, all ASMs were admitted to the first cycle. Additionally, most ASMs insisted on sticking together based on family relations or friendships, or relations developed during their journeys. This preference to stick together suited school staff who was faced with technical and human resource limitations.

The plan was to keep students in the first cycle in the next school year, too, in case that was what they wanted, despite some having greater knowledge and, not to mention, life experience. According to the action plan that the school developed, students would be enabled to sign into proper grades later on in the same school year if they express a wish to be admitted to the grade that better corresponds to their level of education.<sup>1148</sup>

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<sup>1144</sup> Information about the education of ASMs in this particular school was obtained during the visit to the school in May 2018, through the interviews with the respective school staff.

<sup>1145</sup> School Action Plan, 2017, p.3.

<sup>1146</sup> School Action Plan, 2017, p.4.

<sup>1147</sup> School Action Plan, 2017, p.5.

<sup>1148</sup> Action Plan for school 2017/2018. Inclusion of refugees / asylum seekers in primary school for education of adults “Đuro Salaj”, p.2.

At the beginning there were 25 ASMs, all coming from Afghanistan. Now there are only four boys. However, the school managed to secure a free pass ticket to a swimming pool, and the boys began spending their time there instead of at school.

Transportation to school is provided via a special mini-van assigned to take them to school and back.

ASMs typically stay a couple of months at “Đuro Salaj” and are not officially registered in the school registry, even though the Ministry of Education has advised the opposite. The school staff justifies this by the lack of necessary documents and the fact that ASMs state they do not want to continue their education there.<sup>1149</sup>

They have demonstrated an exceptional gift for mathematics, painting, music and the English language as well. They have shown interest in informatics and natural sciences. Therefore, the curriculum is being tailored according to their wishes and to suit their needs.

Topics in the English language class are carefully selected and usually consist of providing ASMs with skills on how to fill in official forms or payment slips in Serbian language; they also cover local culture, state regulation, etc.

There are accompanied as well as unaccompanied ASMs admitted to “Đuro Salaj.” School staff noted that female ASMs are always accompanied. In order to be admitted to this school, ASMs must be older than 15 and there is generally no contact with parents due to their maturity.

Unaccompanied minors who crossed the Bulgarian border have most often experienced trauma. On the other hand, their stay in Bulgaria helped them understand the Serbian language better.

Serbian language is dominant. Staff at the school noticed that those who speak English language, have a harder time learning Serbian. By contrast, the longer they stay in Serbia, the weaker their English becomes.

UNICEF has held a number of seminars and trainings to prepare school staff at “Đuro Salaj” for schooling of ASMs.

The school’s staff stresses that their advantage is hospitality and resourcefulness and secondly their enthusiasm for inclusion and socialization. Thirdly, the school has experience with “combined classes”, which means that one teacher manages a class that is at the same time attended by a wide age range of students that follow different grades and materials.

There were no cases of racism or discrimination noted. Girls were shy at first, and they were confused about having to share a class with boys. Domestic boys did not have any particular reaction to them, whereas male ASMs teased the female ASMs.

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<sup>1149</sup> Information obtained from interview with school integration support team on 30.05.2018, Belgrade.



ASMs note that they were welcomed. A reception and the ability to play football and basketball with local students were of particular note for ASMs.<sup>1150</sup> Moreover, ASMs invited their domestic school peers to their birthday parties, which were celebrated in the camp.

ASMs have shown a lack of motivation for schooling since they do not want to stay in Serbia, justifying their decision by citing slim employment chances.

This school also issues school reports, which only serve to show that there was no education vacuum. So far, no one asked for one. Because there is no official register of their attendance, students will sometimes show up and sometimes they choose not to.

Few organizations provide assistance to the school. Those that do are UNICEF, the Ministry of Education, and the Center for Crisis Policy and Reaction.

The School Action Plan foresees that a class teacher is responsible for all school and extracurricular activities. In that respect, he/she needs to have more than 30 years of teaching experience and have experience in the individualized approach since he/she will be in charge of a multicultural class attended by ASMs.<sup>1151</sup> He/She is a coordinator of all activities related to ASMs' education, and must recognize and acknowledge student's expressed and unexpressed needs.

The Asylum Protection Center (APC) initiated admission into "Đuro Salaj," and parents/legal guardians gave their written consent for ASMs to attend the school.<sup>1152</sup> However, because the school also admits adults, there are no teacher-parent meetings, although parents can obtain any information related to the education of their children based on the open doors principle.<sup>1153</sup>

Certain measures have been put in place to make sure that all ASMs, who will attend the first cycle of education, have access to learning opportunities that correspond with their real level of knowledge. This is important because placement of students into the appropriate level of learning is not without its challenges, as has already been discussed. Classes may include different materials and various teachers may be included, such as the presence of an English language teacher and teachers of other subjects.<sup>1154</sup>

A team responsible for the examination of previous knowledge, which was created by the team for inclusive education, has been approved by the school principal.<sup>1155</sup> This team has noted that most of ASMs' knowledge goes beyond the first level of knowledge, and sometimes it is even greater than the knowledge eighth graders have. Nevertheless, ASMs have expressed their desire to stick together in the first cycle even in the following school year.<sup>1156</sup>

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<sup>1150</sup> Information obtained from interview with school integration support team on 30.05.2018, Belgrade.

<sup>1151</sup> School Action Plan, 2017, p.3.

<sup>1152</sup> School Action Plan, 2017, p.3.

<sup>1153</sup> School Action Plan, 2017, p.3.

<sup>1154</sup> School Action Plan, 2017, p.4.

<sup>1155</sup> School Action Plan, 2017, p.4.

<sup>1156</sup> School Action Plan, 2017, p.4.

## Serbian language as a language of instruction

The very fact that ASMs attend the curriculum in Serbian language enables them to better master it. Furthermore, each teacher explains Serbian language grammar and introduces new words to them along the way. In addition, the presence of an English language teacher can also be arranged.<sup>1157</sup>

## Critics

The school staff would like to seclude ASMs from regular lectures, explaining that they need more attention and different curriculum that better meets their education level and unique needs they face. In addition, school staff notes that their presence slows down the pace that domestic students are following.

Additional funds and staff are needed in order to increase the quality of education ASMs receive. In other words, there is the need for state budget changes.

It is urgent to develop pre-admission programs in order to level up with domestic students.

## 3. Monitoring and Evaluation of the Findings through the Human Rights-Based Approach to Education

In order to assess the government's success in granting the right to education, it's obligation to respect, protect and fulfil human rights, and, in this case, the right to education, its work needs to be linked with the human rights framework for education. The 4A Scheme created by the former UN Special Rapporteur, Katarina Tomasevski, which was previously mentioned within the Chapter State of Arts, is particularly relevant.

The obligation *to respect*- to refrain from interfering with the enjoyment of the right; *to protect* - guarantee that third parties do not infringe on someone's enjoyment of the right; *to fulfil*- take appropriate legislative, administrative, budgetary, judicial and other measures; are linked with the satisfaction of the criteria such as *availability* – related to the number of schools taking part in the inclusion of ASMs, and the adequate number of available teachers whose own human rights are realized; *accessibility* – free from direct, indirect and opportunity costs, within safe physical reach or else with free transportation, and addressing gender completion disparities, i.e. equally provided to all; *acceptability* – which stands for the discipline which is compatible with human dignity and no violence or corporal punishment, ensures access to water and sanitation, and curriculum and teaching materials are of good quality and content which is consistent with human rights aims; *adaptability* - meets the educational needs of ASMs and the changing needs of a society.<sup>1158</sup>

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<sup>1157</sup> School Action Plan, 2017, p.4.

<sup>1158</sup> Dr. Melchiorre, Power Point Presentation, 2016, slides 17-20, 23.

The committed government is one that takes steps, which, among others, consist of adopting necessary laws and policies, making funds available, monitoring and assessment of progress, and establishing remedial mechanisms.<sup>1159</sup> Furthermore, it must ensure access to education on a non-discriminatory basis, free and compulsory primary education for all as well as free choice of education.<sup>1160</sup>

For more clarification, please refer to Table No. 14 provided below, which provides an overview of government obligations. This serves as a basis in the assessment as to whether or not the state is violating the right to education. In this particular, the table is used to assess the case of if the Serbian government is breaching the right to education of ASMs and/or identification of the gaps and potential for improvement. This is followed by the analysis of good practice examples, which also could serve as an argument for (un)successful implementation of the right to education, since the schools are the ones directly implementing adopted legislation, strategies and policies, and therefore could reveal a lack of political willingness to implement them or the false intentions of the state on the way it presents itself before the international community. On the other hand, this kind of empirical research can assist a committed government to improve the access to an educational system in case of identified gaps between theory and practice.

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<sup>1159</sup> Dr. Melchiorre, Power Point Presentation, 2016, slide 26.

<sup>1160</sup> Dr. Melchiorre, Power Point Presentation, 2016, slide 24.

	<b>Availability</b>	<b>Accessibility</b>	<b>Acceptability</b>	<b>Adaptability</b>
<b>Respect</b>	O: Respect the freedom to establish and direct educational institutions in accordance with minimum standards V: Prohibition of establishing educational institutions other than those directed by the State	O: Respect the right of all individuals not to be discriminated against in accessing education V: Denial of access to particular individuals or groups, whether through legislated or enforced discrimination	O: Respect the freedom of parents to ensure education in conformity with their moral and religious convictions V: Inhibition of the establishment and operation of religious schools that respect minimum standards	O: Respect the establishment of formal and informal initiatives that promote adult education V: Interference with the establishment of formal and informal adult education programmes
<b>Protect</b>	O: Ensure that the educational freedoms do not lead to extreme disparities of educational opportunities V: Failure to monitor and regulate private education to ensure that it conforms to minimum standards and does not discriminate	O: Ensure that nobody, including parents, can stop a child from attending primary education V: Failure to address obstacles to attendance (such as child labour, child marriage, household chores) that are linked to parents/families' needs and views	O: Ensure that curricula, textbooks and teaching methods do not perpetuate or encourage discrimination V: Use of curricula that are biased towards a specific group or situation on account of their sex, race, language, religion, disability, ethnicity, income...	O: Ensure that diverse abilities and situations are taken into account in policies and planning V: Failure to ensure equal standards for educational opportunities and facilities for persons with disability
<b>Fulfil</b>	O: Provide a sufficient number of public schools offering free and compulsory education for all children V: Failure to use the maximum of available resources to provide, for example, schools in adequate conditions	O: Provide compulsory education without discrimination, within safe reach and free from direct or indirect costs (for children and parents) V: Failure to provide free textbooks or facilitate access to school for children living in rural areas	O: Provide education of good quality that is child-centered, child friendly and empowering V: Allowing the use of corporal punishment and failure to ban it	O: Design and implement education for children precluded from formal schooling V: Failure to develop or implement programs for particularly vulnerable children (for example street children or children of illegal immigrants)

**Table No. 14-** *Link with the 4As: Overview of Possible Obligations (O) and Violations (V)*<sup>1161</sup>

<sup>1161</sup> Taken from Dr. Melchiorre, Power Point Presentation, 2016, slide 28.

Bearing in mind the afore-mentioned, the gathered findings reveal that the Serbian government has ratified and incorporated into domestic legal order relevant international legal standards, and it has adopted accordingly certain strategies and instructions aimed at the improvement of the position of ASMs in Serbia. It does provide enough educational institutions to provide education to ASMs; however, it is important to include more and more high performing schools for ASMs to attend so they are not only enrolling at schools assumed to deliver lower results.

Furthermore, the Serbian government strives to ensure full inclusive education by reaching 98,22 percent of peak inclusion in February 2019.<sup>1162</sup> The goal is for these schools to be within safe physical reach either by providing free transportation or by providing the actual means of transportation (for instance a van or bus service designated for ASMs). However, the disadvantage is that organized van or bus service is dependent on donations, making them sporadic. And, in the case of ASMs who use public transportation that is provided to them for free, they often travel alone. If there are no volunteers (who are usually provided by a NGO) to accompany them on their journey from the refugee camp to school, they are completely vulnerable to various hazards that might appear along the way.

The collected data also demonstrates the determination to ensure the best interest of the child by taking an individual approach granted through Student Support Plans, keeping records on educational advancement and the possibility to receive the official document providing the bilingual overview of acquired knowledge in Serbia. However, one of the existing flaws of the system that should be removed is the way of testing children at the end of the eighth grade. The current practice may prevent ASMs from acquiring their degree. Therefore, alternatives to the completion exam need to be offered and ensured.

Additional conclusions regarding the government's responsibility will be found in the Conclusion section, whereas now proceeds the section on identified elements of good practice.

Elements of good practice examples, some of which were identified during the empirical research and others suggested by the author of this dissertation, would comprise the following: the approach of the school ensuring and nurturing the respect of multi-culturalism; promoting inclusive education through linguistic, ethnic and racial diversity, while securing the principles of equality and prohibition of discrimination; schools campaigning against racial or ethnic bullying or any other bullying based on the status of *otherness*; fighting against poor attendance due to caring of family members or any other reason that might come in the way of the completion of the primary, secondary or higher education; providing for organized safe and free transportation to/from the school; addressing in time mental health problems and providing for an always available school psychologist; organization of extracurricular activities that would make ASMs feel welcomed and appreciated; holding regular meetings with parents of domestic children informing them on the arrival of new students as well as with the parents of ASMs providing regular feedback on the

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<sup>1162</sup> Ministry of Education, February Report prepared for Minister of Education, 2019, p. 1.

integration process and an inclusive education system; providing financial assistance and scholarships as well as envisaging a budget for formal education targeted especially to the improvement of the needs of ASMs as well as teaching staff; fighting against isolation, helping to bridge difficulties in making friends in a peer group; nurturing mutual respect, tolerance and promoting diverse cultural and religious heritage of the country; tailoring the curriculum and teaching methods in accordance to the need of ASMs, through accepting their inputs from regular meetings as well as taking into consideration the needs of their parents, i.e. that education is conducted in accordance with their philosophical, moral and religious convictions. However, it is important to ensure that no one, including the members of the student's immediate family, could prevent a child from attending primary education.

There are a number of things schools that enroll ASMs can do to continue ensuring ASMs successful integration. School's can provide for more elective courses offered in Arabic, Farsi, Pashto or any language of the greater admitted ASMs ethnic group and through the recruitment of additional teaching staff.; more lectures devoted to the development of computer literacy and IT skills; better work conditions for teaching staff; provide orientation for parents on the importance of completion of education in Serbia and chances on the employment afterwards with the respective diplomas and access to the labour market.

Another good practice example comes from schools who developed close cooperation with Social Work Centers, Reception Centers or any other Institution where ASMs are accommodated, as well as with Health Centers and Employment Agencies; enhancing of trainee and volunteer programs that could provide ASMs with their first work experiences in Serbian work market, which could later be of great help in understanding of the same and directly increase their employability; informing ASMs, parents and legal guardians of their rights and existent mechanisms of protection.

Organization of the events and/or workshops on the exchange of knowledge and skills that could provide domestic pupils or Serbian society in general with knowledge not generally offered within the existing domestic education system.

Finally, the example of the school "Brank Pešić" stands out in the pool of the collected empirical data, not only for the personal devotion and motivation of the teaching staff but through the courage to be among the first to admit ASMs and make them feel welcomed and appreciated. The flexibility and openness of the programme, curriculum and teaching methods to change, improve and evolve was also instrumental in their successful inclusion of ASMs. The same personal commitment to development and securing of the best interest of the child as well as creating a child-friendly and safe environment was identified in the primary school "Jovan Ristić."

## Conclusion

In conclusion, children in the context of migration should be viewed as a group whose members are to be addressed holistically, and challenges to their rights in countries of origin, transit and destination should be equally prioritized.<sup>1163</sup> Children in the context of international migration must be regarded as right-holders. States parties to the CRC must meet positive obligations to ensure that the rights enshrined in the CRC are guaranteed to all children present on state territory on equal terms, regardless of their or their parents' migration status. In other words, there should be no gaps in legal entitlements and in their implementation when it comes to protection of children's rights.

Therefore, when it comes to the right to education, the Serbian legislature stayed to some extent unclear when adopting new legislation on asylum and temporary protection, and did not address children in need of international protection equally. In other words, when stipulating the rights and obligations of asylum-seekers, of persons granted asylum, subsidiary protection or temporary protection, it appears that minors granted asylum are in the best position, having the right to preschool, primary, secondary and higher education under the same conditions as citizens of the Republic of Serbia (Article 64 of the LATP); asylum-seeking minors have the right to free primary and secondary education (Article 55 of the LATP); minors have been granted the temporary right to free primary and secondary education (Article 76 (5) of the LATP); whereas when it comes to minors granted subsidiary protection, only a general clause stipulating the right to education appears in Article 59 of the LATP. It should also be mentioned that the legislator positively included a clause that places the obligation on the state to include ASMs immediately into the state's education system, or, at the latest, three months from the submission of an asylum application.

Furthermore, all children are entitled to protection, to services that meet their needs, and to participate in decisions affecting them in wider social and cultural activities.<sup>1164</sup>

Equal access to asylum procedures and non-discriminatory interpretation of refugee law must be applied in order to ensure age, gender and inclusive asylum procedures. Furthermore, the best interest of the child principle, as stipulated in Article 3 of the CRC, serves as an interpretative aid to international refugee law, broadening and deepening the scope of protection in terms of substantive as well as procedural mechanisms.<sup>1165</sup>

Serbia has ratified the CRC and other respective international human rights legal instruments that are applicable to the situation of refugees and asylum-seekers. Consequently, the CRC provides a

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<sup>1163</sup> UNICEF (c), 2012, p.1.

<sup>1164</sup> Cemlyn, S. and Briskman, L, 2003, p. 167.

<sup>1165</sup> Edwards, Alice, 2003, p. 50.

Goodwin-Gill, 1995, p.406.

Archambault, Josee, 2010, p.443.

baseline for the analysis of policy and practice in relation to refugee and asylum-seeking children.<sup>1166</sup>

In order to ensure proper protection of the rights of asylum-seeking minors, the Refugee Convention must be interpreted and implemented in accordance with international human rights law, international humanitarian instruments, and international customary law. Furthermore, proper cooperation of domestic and international initiatives and agencies such as UNICEF and the UNHCR is critical to achieve expanded protection.

Finally, the monitoring system of the Committee on the Rights of the Child and the ECtHR is a valuable tool to assess achievements in the protection of the rights of asylum-seeking minors and improvement at the national level. Similarly, the mechanism allowing for individual complaints before the two paves the way for children to have their voices heard and their rights recognized.

Regarding the EU and its legislation on asylum, or so-called CEAS, Serbia will have to align with this legislation in years to come. Even though protection standards are undoubtedly raised in the second phase of harmonization with CEAS, the numerous exceptions to good principles enable Member States to stick to existing disparities and leave room to further deteriorating asylum and human rights situation in Europe.

It appears that asylum policy of some European countries has been built on the strong influence of nation-state interest on migration restriction; that is, they have been built on measures that keep people out or contain them in their country of origin.<sup>1167</sup> This is followed by tougher visa requirements, safe third country policies, and carriers' liability, deterrence measures such as expedited procedures, reduced access to appeals, and eventually surveillance approaches such as fingerprinting, monitoring and identity cards, and detention. Notwithstanding, European states have gone even further by intercepting boats carrying migrants on the Mediterranean and bringing in police and military in order to build fences on the borders.

In addition, some Member States have been unwilling to show solidarity when it comes to acceptance or relocation of asylum seekers. They have maintained the principles of the 'safe countries of origin' and 'safe third country', despite the fact that there is no common EU-list for the countries considered 'safe'. Furthermore, some Member States have developed resettlement policies, thus placing an emphasis on the protection of refugees in their regions of origin, or even as defined by CEAS on internal protection possibilities. Recently adopted domestic asylum legislation in Serbia foresees this option, too, in Article 31 of the LATP when assessing the merits of asylum applications.

Thus, the barriers are obviously erected at both the national and EU levels as part of 'fortress Europe'. However, those wishing to reach its walls need to get through a wider buffer zone of

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<sup>1166</sup> Cemlyn, S. and Briskman, L., 2003, p. 166.

<sup>1167</sup> Cemlyn, S. and Briskman, L., 2003, p.164.

Garlick, M., 2006, p. 46.



previously mentioned ‘safe third countries’, ‘safe countries of origin’ and interceptions by Frontex, notably in the Mediterranean regions.<sup>1168</sup> This approach clearly jeopardizes access to protection granted in international refugee law, and it especially violates Article 33 of the Refugee Convention stating that ‘no Contracting State shall expel or return a refugee in any manner whatsoever’. Moreover, closing the routes that migrants are taking and allowing only nationals from certain countries to pass violates the right to seek asylum, since every person is entitled to the right, no matter the grounds on which the claim is based.

Bearing in mind that the future development of the CEAS is unpredictable, as there is a lack of political readiness to undertake further improvements, it remains of utmost importance to continuously hold the EU, its Member States, and States wishing to join the EU accountable. They should all remind themselves of self-set goals and obligations in the field of refugee and human rights law, and of the principles of responsibility and solidarity.

The role of the ECtHR and the Court of Justice remains crucial as human rights safeguards, watchdogs of compliance with EU and international law, and to exert appropriate diplomatic pressure when needed to prevent violations. As the decision in *M.S.S. v Belgium and Greece* demonstrated, Member States can no longer simply turn a blind eye to the rights abuses of others, and Member States need to step forward and offer assistance to help remedy the deficits.

The EU has faced several practical, legal and policy problems, and it has to deal with two substantial challenges. On the one hand, it has to prevent unsafe journeys and risks to the lives of people seeking international protection in the EU, and, on the other hand, it must organize the distribution of related responsibilities among the Member States and devote itself more honestly to the protection of asylum seekers.<sup>1169</sup>

There is a more ethical way to tackle smuggling and to reduce dangerous, deadly journeys. One way is to consider lifting or suspending visa requirements and carrier sanctions for at least those nationalities in greatest need of refuge.<sup>1170</sup> Similarly, safe access could be achieved through humanitarian evacuation programmes, humanitarian visas, and more extensive use of existing migration visas for family reunification, work, study or research.<sup>1171</sup>

Finally, the CEAS needs to be further reformed, in particular the Dublin regulation, by replacing the state of first arrival rule with fairer and more realistic ‘burden-sharing’ rules. Otherwise, “the

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<sup>1168</sup> European Commission (b), 2015, p.4.

European Commission (c), 2015, p.1.

Klepp, 2010, p.2.

<sup>1169</sup> Guild Elspeth, 2015, Abstract

<sup>1170</sup> Guild Elspeth, 2015, p. i.

<sup>1171</sup> Guild Elspeth, 2015, p. i.

Directorate General for International Policies, 2015, p.69.

disintegrating state of the CEAS combined with deep-cutting austerity measures will ensure that the rips continue to spread much faster than they can be mended.”<sup>1172</sup>

It is in the hands of the European Court of Justice to review new legislative proposals from Member States from a human rights perspective, and, in particular, a child rights perspective, taking into consideration not only EU law, but also the UNCRC.

When ASMs reach their chosen destination country, the minimum set of rights that needs to be granted (but is still not enough) is: a roof over their heads, safety, inclusion into education systems, to be well-nourished, receive appropriate clothing, and for those travelling alone, appointment of legal guardian.<sup>1173</sup>

On the other hand, international human rights law could assist the protection of the right to education of asylum-seeking minors in a transit country, i.e. in Serbia, based on the prohibition of discrimination in primary education.

All in all, Serbian asylum legislation is generally in line with international standards for the protection of persons in need of international protection, with deficiencies in the system and procedure generally stemming from poor implementation of the existing legislation.<sup>1174</sup>

On the other hand, it should be noted that Serbia is neither a member of the European Union nor a party to the Dublin Regulation, hence there is nothing equivalent to a Dublin procedure in the country.<sup>1175</sup> This means Serbia does not take part in the EURODAK system and is not expected to fulfil the obligation of exchanging data and fingerprints of asylum-seekers and migrants.<sup>1176</sup>

Due to the general lack of knowledge about international refugee law and international human rights law by national officials, a number of issues concerning limited access to the asylum procedure were reported in 2015, 2016, and 2017. In particular, these include push-backs from Serbia to the Former Yugoslav Republic of Macedonia (FYROM), arbitrary returns to third countries from Belgrade ‘Nikola Tesla’ Airport, to Bulgaria under the Readmission Agreement with the European Community (without careful examinations of every individual case), refusals to issue the certificate of having expressed the intention to seek asylum to persons whose certificate expired or was stolen, denial of access to the asylum procedure to asylum-seekers returned from Hungary, among others.<sup>1177</sup>

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<sup>1172</sup> Langford, 2013, p.263.

<sup>1173</sup> ENOC, 2016, p. 16.

<sup>1174</sup> Aida (b), 2016, p. 12.

<sup>1175</sup> Aida (b), 2016, p. 12.

Commission, 2014, p.4.

<sup>1176</sup> CZA, 2013, p.13.

<sup>1177</sup> Aida (b), 2016, p.14.

Furthermore, Serbia does not provide free legal aid to asylum seekers for the purposes of the asylum procedure, even though the right to free legal aid is guaranteed by the Law on Asylum as well as the right to receive information concerning asylum.<sup>1178</sup>

In addition, despite the fact that there is no admissibility procedure in Serbia, the Asylum Office may dismiss an application without examining the merits when the asylum-seeker is deemed to come from a safe third country or a safe country of origin.<sup>1179</sup>

Finally, the asylum system in Serbia continues to develop and there is considerable scope for its improvement. Deficiencies of the asylum system in Serbia are primarily related to the time of commencement of the asylum procedure and the length of the asylum procedure, the absence of a fixed deadline for the registration of persons who have expressed an intention to seek asylum, non-issuance of identity cards for asylum seekers due to non-implementation of registration on time, and the lack of a time limit of issuing identity cards for asylum seekers, and eventually the lack of regulations and mechanisms for the integration of persons granted asylum in Serbia.

With this in mind, Serbia's government should ensure access to the country's territory for asylum-seekers in full respect of the principle of *non-refoulement* as established in international refugee and human rights law; ensure that the Asylum Office is formally established in line with the Law on Asylum/ the LATP and allocated appropriate budget and staffing; it should establish training programmes for law enforcement officials, police and other concerned personnel concerning the 1951 Convention; and Serbia should enact a mechanism to ensure the sustainability of a training programme, and ensure that all asylum-seekers are registered and issued a document immediately.

Furthermore, regarding the right to education, there should be more responsibilities placed on schools and local governmental bodies, instead of on parents, to keep record of asylum-seeking minors that need to be placed in schools. This should be done in coordination with asylum centers and social work centers so that proper inclusion of asylum-seeking minors is ensured at all times.

As far as the benefit of inclusion of ASMs into Serbian education system is concerned, it lies in the fact that they may have both experience and talent that can be of great value for the development of society and nation; inclusion of ASMs contributes to the progress of society as a whole. Not only that, but education empowers the individual, it transforms society, and it contributes to economic advancement for all.

Furthermore, it is necessary to raise public debate for more effective implementation of existing international legal standards, since fulfilment of international legal obligations is a determining factor in achieving the right to education.

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<sup>1178</sup> Aida (b), 2016, p.19.

Bakonyi, 2011, p.1.

<sup>1179</sup> Aida (b), 2016, p. 20.

Eventually, education of ASMs could be justified based on the fact that a pluralist view of society is desirable and that public institutions should reflect on the fact that a concerned society contains many diverse beliefs and cultures that can only enrich it and contribute to its prosperity.

The benefit of providing education for all is that education aims at socialization, at the integration of the individual into society, which further develops the sense of belonging and has the potential to prevent acts of terrorism.

Therefore, if the implementation of the right to education would be proper, the educational system would be able to meet the social development challenges of our time. Furthermore, the guarantee of a minimum education for everyone reduces vulnerability of children. It reduces social selectivity and contributes to the growth of human capital, the key factor for future development of modern societies.

One can note that during the course of the last fifty years the international community has embraced education as a basic human right.<sup>1180</sup> It is up to human rights defenders as well as the international community itself, to make sure this empowerment right does not end up as a dead letter because the means of implementing it are absent or defective.

The better protection or fuller realization of the right to education could be achieved through improvements in the reporting and monitoring processes before relevant international monitoring bodies, as well as greater commitment on the part of States Parties to fulfil their reporting requirements and obligations under the international instruments conscientiously and in good faith.<sup>1181</sup>

However, ensuring good quality education for ASMs is quite challenging due to a variety of reasons. Some of those challenges include including children who do not speak the language of a host country, come from different origins, have different educational levels, even if they are of the same age, and the high, rapid influx of large numbers of students further complicates the quality of education.<sup>1182</sup>

As an answer to the high influx of ASMs, hiring experienced teachers could resolve this problem. The language barrier to high-quality education could be overcome with proper educational methods, since it has been demonstrated that it is not necessary for teachers to speak the same language as a child.<sup>1183</sup>

Finally, activities have been undertaken as a response to the “refugee crises” that are related to the exercise of the right to education, since it became clear that a certain number of this population will stay for longer in the country. Even though there are still many activities that need to be

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<sup>1180</sup> Hodgson, 1996, p. 260.

<sup>1181</sup> Hodgson, 1996, p. 262.

<sup>1182</sup> ENOC, 2016, p. 23.

<sup>1183</sup> ENOC, 2016, p. 24.

undertaken in order to ensure the proper protection of this basic human right, some examples of *good practice* were identified.

In particular, regarding the primary school “Branko Pešić”, the school principal tries his best to provide arts supplies for all the children attending the school, which helps to overcome one of the potential obstacles to inclusive education. Furthermore, the school has developed the possibility for ASMs to attend the school in a flexible shift, which is tailored to suit their daily activities such as receiving breakfast at the refugee camp before arriving at school.

It was also the first school in Serbia that noted the need to issue bilingual school reports to ASMs and provide them with feedback on their progress and knowledge acquired. This represents a valuable document for their further education that they will most likely receive in another country.

Furthermore, the school “Jovan Ristić” in Borča deserves to be praised not only for the fact that it is among the first schools that started enrolling ASMs, but for the fact that it planned the admission of some 450 ASMs starting from the winter semester 2017. Eventually, all the schools showed the understanding of the needs of ASMs and tried their best to tailor the programmes and school shifts in order to ensure application of the best interest of the child principle.

Regarding the response of some state institutions, such as the Center for Social Work or the Ministry of Human Rights, it remains insufficient. However, the Commissariat for Refugees and Migration finds that additional pressure to be unnecessary, since NGOs are very much present in the observation and hold regular meetings with the relevant state bodies. Though the staff notices that there should be more action on the school’s administration part as well as the Center for Social Work.

Regarding the issue of enrollment, school principals, camp directors, school psychologists, and the rest of the school staff come to agreement when it comes to enrollment requirements for ASMs. Almost all agree that the very presence of an asylum-seeking minor on the territory of the Republic of Serbia should be enough for a child to exercise its right to education, and it should not be restricted by the requirement of prior police registration. By contrast, there are some who claim that a minimum requirement of expressed intention to seek asylum in Serbia needs to be met.

Educators are faced with language constraints, which is why many activities do not have a clear educational goal, but rather focus on the socio-emotional benefit. There is no systematic work on communication in the mother tongue, nor in the learning of Serbian language. It is necessary to define, after piloting, by-laws, such as the Rulebook on the Serbian language program as a foreign language, and more detailed instructions regulating the procedures for enrollment.

Namely, it was not before the 5<sup>th</sup> of May 2017, when education institutions in Serbia received the *Professional Instruction for the Inclusion of Refugees / Asylum Seekers in the Education and Upbringing* approved and signed by the Minister of Education as some kind of guidance. Some of the feedback that schools have provided so far refer to comments and open-ended questions that

the concerned document still did not tackle. For instance, that Professional Instruction came too late, and that schools have already been applying some of the instructions contained in the document bearing in mind *best interest of the child*.

It has been noted that if a child has a certificate of previously acquired education, it would still be good to do an admission test, as there are some subjects that they know much better or less than should be expected. If the admission test determines that the level of knowledge corresponds to a class that is much lower than a belonging school age - what then? Or, as one example showed, what should happen if ASMs have reported to have fewer years of schooling than they actually do? If brothers and sisters are enrolled in the same school and it is important for them to be together in the same class, but the estimated level of knowledge between them is very different - what then? Additionally, if brothers and sisters are enrolled in the same school, and it is important for them to be together in the same class and have a similar estimated level of knowledge, however the number of students in the class in that grade is great - then what? Who and in relation to which external support (standards of achievement? School curriculum?) will make the admission tests? Support for this segment is needed. Moreover, it is still unclear who will be in charge of stress relief within the Student Support Plan and how to provide a translator. In addition, how many subjects must a student attend in order to complete the school year? How to ensure the regularity of attending classes? How to assess student achievement (formative and / or summative)?

Finally, in order to get the answers to these questions, stronger cooperation between the countries faced most directly with the refugee crisis needs to be established in order to learn one from another and share valuable experiences. Furthermore, the situation on the ground deserves to be monitored more closely, since most likely it will self-produce the proper answers to these open-ended questions.

## Recommendations

In light of the conducted research, some recommendations have emerged and are listed below.

ASM s need targeted support as they enter the school system. This includes intensive language and general induction programs that allow them to participate in mainstream classes as soon as possible.<sup>1184</sup>

Because some of them might arrive with war trauma, schools should offer psychological support.<sup>1185</sup>

It is necessary to ensure that students are not segmented into different types of schools based on socio-economic grounds, to enable their parents to take part in and provide information of the education process, to offer remedial programs, and to equip teachers with the tools to provide support to students with multiple disadvantages.<sup>1186</sup>

Furthermore, the EU and the European Council should develop minimum standards for emergency reception and transit centers, and provide assistance to member states and non-EU countries to meet those standards. This includes provision of heating, warm water, warm clothing, food and practical and medical assistance by trained workers as well as child-friendly spaces.<sup>1187</sup>

Furthermore, the EU action plans agreed to by Turkey and the Western Balkans countries are lacking a child rights perspective, as they do not include any specific actions with regard to children. Therefore, it is necessary to take concrete measures to ensure that these action plans and the action plan for implementing the strategy for prevention and protection from discrimination is carried out in a timely and effective manner.<sup>1188</sup>

In order to improve conditions for children on the move, it is essential that comprehensive data is collected and shared at the European level.<sup>1189</sup>

It is essential to collect data and develop tools that will allow Serbia to assess and ensure the effective enjoyment by racial and ethnic minorities of all human rights and fundamental freedoms and make use of such data for planning and evaluation purposes.<sup>1190</sup>

Professionals meeting ASMs should ensure that they are seen and heard, are provided with age-appropriate information in a language and format they understand, and that their own asylum claims are considered.

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<sup>1184</sup> Bodewig, at <http://blogs.worldbank.org/education/education-key-integrating-refugees-europe> (last consulted 15.08.2019).

<sup>1185</sup> Ibid.

<sup>1186</sup> Ibid.

<sup>1187</sup> ENOC, 2016, p.3.

<sup>1188</sup> Human Rights Committee, 2017, para 9.

Committee on the rights of the Child, 2017, para 23.

<sup>1189</sup> ENOC, 2016, p.3.

<sup>1190</sup> Human Rights Committee, 2017, para 9.

Serbia should make sure that privacy is offered in emergency shelters, which are designed to accommodate ASMs for just a few days, as well as provide opportunities to participate in leisure activities and that the possibility to receive education is provided.

Moreover, it is urgent to increase efforts to promote tolerance for persons belonging to ethnic, national, racial, religious and other minorities, including persons belonging to the Roma community.<sup>1191</sup>

Provide access to education for all non-national school-age children, including children who have not expressed their intention to seek asylum in Serbia and ensure equal treatment with Serbian citizens.

It is of utmost importance to ensure “that access to formal procedures for asylum applications is available at all border points, notably in international airports and transit zones, and that all persons engaging directly with refugees or migrants are appropriately trained; (b) ensuring that all asylum applications are assessed promptly on an individual basis with full respect for the principle of non-refoulement and that decisions of denial can be challenged through suspensive proceedings; (c) refraining from collective expulsion of aliens and ensuring an objective assessment of the level of protection when expelling aliens to “safe third countries”; (d) ensuring adequate conditions both inside and outside reception centers for all refugees and asylum seekers; and (e) ensuring that appropriate protocols are in place for identifying the age of unaccompanied minors and ensuring that they receive appropriate guardianship and treatment that takes into account the principle of the best interests of the child.”<sup>1192</sup>

“Ensure full implementation of relevant existing laws prohibiting discrimination, including by strengthening public education campaigns to address negative social attitudes towards Roma children, children with disabilities, minority children, refugees and asylum-seeking children, migrant children, children in street situations, lesbian, gay, bisexual and transgender children and children with HIV/AIDS; (b) Ensure that children living in rural areas have access to quality education and adequate health care and housing; (c) Ensure the availability of sufficient human, technical and financial resources for the effective implementation of the national strategy for the prevention of and protection against discrimination for the period 2014-2018; (d) Introduce a specific mechanism within the commission for protection against discrimination to address cases of discrimination against children.”<sup>1193</sup>

“In the light of general comment No. 1 (2001) on the aims of education, and taking note of targets 4.1 and 4.2 of the Sustainable Development Goals on ensuring that by 2030 all girls and boys complete free, equitable and quality primary and secondary education and have access to quality early childhood development, care and preprimary education, the Committee [on the rights of the Child] recommends that [Serbia]: (a) Develop programmes to reduce dropout rates, and provide for the monitoring and evaluation of such programmes; (b) Strengthen efforts to promote inclusive education for all children, particularly the most vulnerable, and ensure that adequate human,

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<sup>1191</sup> Human Rights Committee, 2017, para 11.

<sup>1192</sup> Human Rights Committee, 2017, para 32.

<sup>1193</sup> Committee on the rights of the Child, 2017, para 23.



financial and technical support are available to implement the provisions outlined in the Law on the fundamentals of the education system.... (d) Further strengthen efforts to improve access to quality education in rural areas and in small towns, including access to preschool, secondary and higher education, particularly for vulnerable groups.”<sup>1194</sup>

“In the light of general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, the Committee [on the rights of the Child] recommends that [Serbia]: (a) Establish fair and efficient asylum procedures that are to be carried out in a child-sensitive manner, in both procedural and substantive aspects, and that can be used to systematically identify and refer unaccompanied or separated children for appropriate protection and support, and consider amending relevant national legislation, including the Law on asylum, in this regard; (b) Ensure the full inclusion of asylum-seeking and refugee children who are unaccompanied or separated in the existing child protection system, provide accommodation in foster families or other accommodation facilities adequate for their age, gender and needs in line with best interest assessments conducted on an individual basis and establish specialized services for children with emotional, psychiatric and behavioral problems; (c) Ensure that all asylum-seeking children are systematically provided with information on their rights and obligations, asylum procedures and available services to prevent them from resorting to sleeping without shelter for fear of deportation, and take the steps necessary to protect unaccompanied children from smuggling rings; (d) Ensure full respect for the principle of non-refoulement and facilitate access to the asylum system for children in need of international protection in line with articles 6, 22 and 37 of the Convention; (e) Guarantee the right to acquire Serbian citizenship for all children currently residing in the State party who would otherwise be stateless, regardless of their own, or their parents’, legal status.”<sup>1195</sup>

Finally, in the General Comment no. 6 paragraph 42, the Committee on the Rights of the Child provides several measures which should be taken, as soon as possible, with the aim of easy access to formal and informal education of children affected by migration, that being registration with appropriate educational institutions, and issuing of school reports and other documents which confirm the level of gained knowledge, especially upon relocation, move or return to the country of origin.<sup>1196</sup> Hence, all schools taking part in the inclusion process, should make sure to comply with previously mentioned suggested measures. The good example of a school report was developed by primary school, “Branko Pešić”, in Zemun.

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In conclusion, the migration of individuals including children is not set to cease any time soon. This means that the adoption and implementation of appropriate measures that respect and protect the human rights and dignity of all individuals is of utmost importance. Serbia, due to its location, has been responsible for harboring thousands of refugees and migrants. The reality of the needs of the individuals who have crossed into its borders has created an additional burden for the state to carry. However, with respect to providing the right to education for ASMs, Serbia, and, more

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<sup>1194</sup> Committee on the rights of the Child, 2017, para 55.

<sup>1195</sup> Committee on the rights of the Child, 2017, para 57.

<sup>1196</sup> BCHR (e), 2017. p. 34.

specifically, its dedicated educators and NGO staff, have done an applaudable job. Though room for improvement remains, the efforts of the state, school personnel, family members of ASMs and caring NGO workers have made the right to education a reality for ASMs who seek it.

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## Appendix I Legal Framework

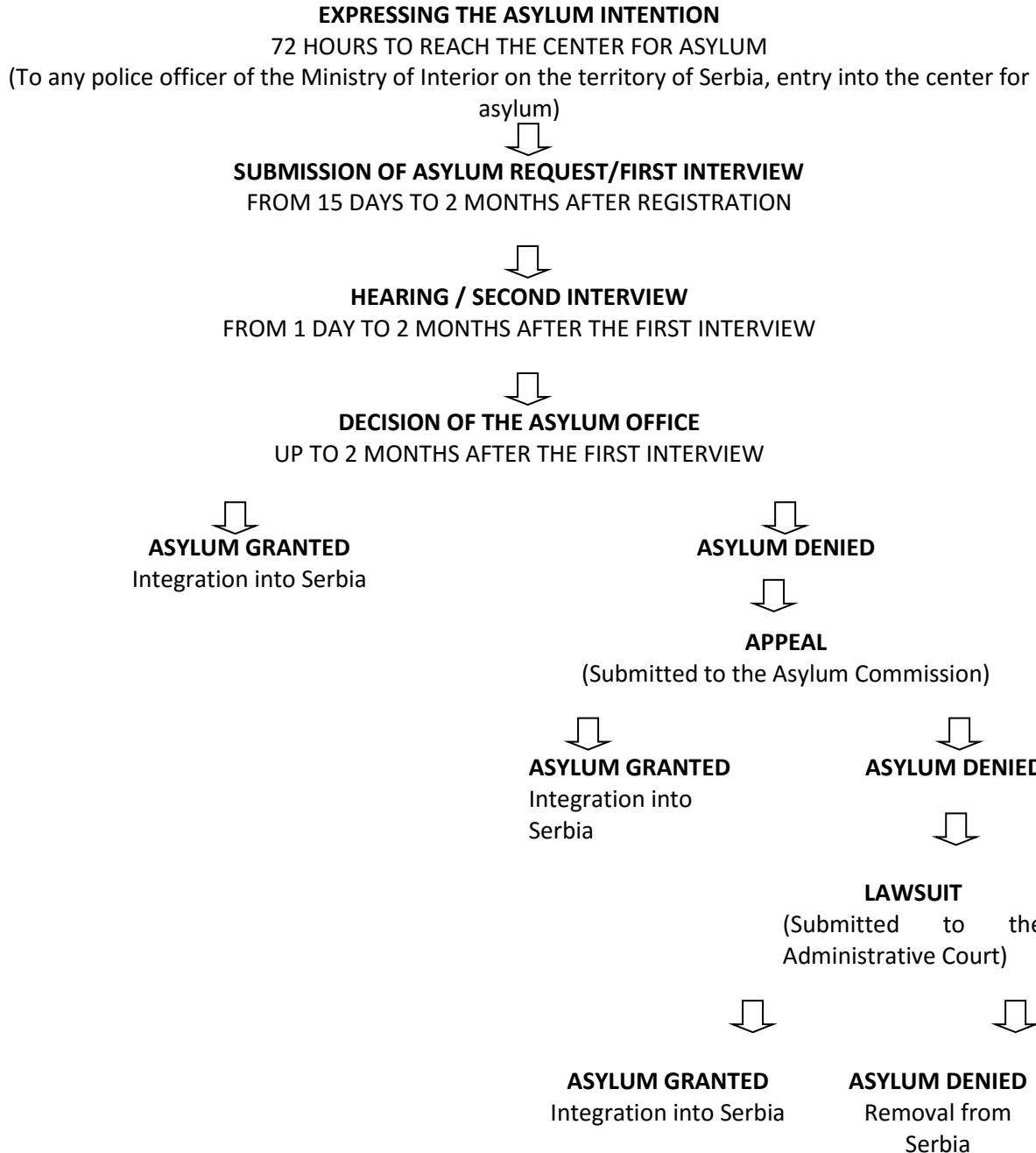
Title ENG	Title SRB
Law on Asylum of the Republic of Serbia Official Gazette no. 109/2007	Zakon o azilu Republike Srbije
Law on Foreigners of the Republic of Serbia Official Gazette no. 97/2008	Zakon o strancima Republike Srbije
Law on Migration Management of the Republic of Serbia Official Gazette no. 107/2012	Zakon o upravljanju migracijama Republike Srbije
Constitution of the Republic of Serbia Official Gazette no. 83/06	Ustav Republike Srbije
General Administrative Procedure Act of the Republic of Serbia Official Gazette of the Federal Republic of Yugoslavia, no. 33/97 and 31/2001 and the Official Gazette of the Republic of Serbia, no. 30/2010	Zakon o opštem upravnom postupku Republike Srbije

**Table No.1** Main legislative acts relevant to asylum procedures, reception conditions and detention (Aida, 2015)

Title ENG	Title SRB
Action Plan for Chapter 24 of the EU Accession Talks	Akcion plan za poglavlje 24 pristupnih pregovora sa Evropskom unijom
Decision Determining the List of Safe Countries of Origin and Safe Third Countries Official Gazette, no. 67/2009	Odluka o utvrđivanju liste sigurnih država porekla i sigurnih trećih država
Decision on Issuing a Certificate of Having Entered the Territory of Serbia for Migrants Coming from Countries Where Their Lives are in Danger Official Gazette, no. 81/2015	Odluka o izdavanju potvrde o ulasku na teritoriju Republike Srbije za migrante koji dolaze iz zemalja u kojima su njihovi životi u opasnosti

**Table No. 2.** Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention (Aida, 2015)

## Appendix II Phases of Asylum Procedure in Serbia (LA 2007)



### Annex III: School Report, Primary School "Jovan Ristić" Borča

<b>ШКОЛСКИ ИЗВЕШТАЈ</b> <b>о укључивању</b> <b>ученика/миграната</b>	<b>SCHOOL REPORT</b> <b>on immigrant children integration</b>
<b>Школа: Основна школа</b> <b>„Јован Ристић“</b> <b>Седиште: Београд, Борча,</b> <b>Беле Бартока 48а</b> <b>Држава: Србија</b> <b>Школска година: 2016/2017.</b>	<b>School: Primary School</b> <b>"Jovan Ristić"</b> <b>Address: Belgrade, Borča,</b> <b>Bele Bartoka 48a</b> <b>Country: Serbia</b> <b>School Year: 2016/2017</b>

<b>Име и презиме ученика</b> <b>Пол</b>	<b>Student's Name</b> <b>Sex</b>
█ ж	█ f

<b>Узраст/Датум рођења</b>	<b>Age/Date of Birth</b>
█	█

<b>Имена родитеља</b>	<b>Parents' Names</b>
█	█

<b>Земља порекла</b>	<b>Country of Origin</b>
<b>Авганистан</b>	<b>Afghanistan</b>

<b>Похађао/ла наставу у периоду:</b>	<b>Attended the school:</b>
<b>27.3.2017. - 30.5.2017.</b>	<b>From 27 March 2017 Until 30 May 2017</b>
<b>Разред/Одељење:</b> <b>8/1</b>	<b>Grade/Class:</b> <b>8/1</b>

Област учења  Areas of Learning	Запажања/ коментари	Comments
Српски језик  The Serbian Language	<p>Научила је да се представи. Зна и користи основне поздраве. Упозната је са језиком школе. Разуме основне инструкције са рад, али питања поставља на енглеском језику и од наставника тражи да јој задатке додатно појасни на енглеском језику. Зна да именује храну и пиће, делове тела, користи личне заменице и помоћне глаголе јесам и бити у презенту. Сматрам да би требало да јој се преко лета омогући похађање интензивног курса српског језика, не би ли у септембру била у могућности да се укључи у редовну наставу. Још увек није савладала ни А1/1 ниво српског језика, тако да би њено укључивање у редовну наставу са овим нивоом познавања српског језика било изузетно отежано.</p>	<p>She learned to introduce herself in Serbian. She knows and uses basic greetings. She is familiar with the classroom language. She can understand basic work-related instructions, but she asks questions in English and asks her teachers to explain tasks in English. She can name food and drinks, body parts, use personal pronouns and auxiliary verb to be in the present tense. She should be allowed to attend an intensive course of the Serbian language during the summer, in order to be able to attend all the lessons in September. She has not yet mastered the A1/1 level of the Serbian language, so her integration into school with this level of knowledge of Serbian would be extremely difficult.</p>

<p>Математика Maths</p>	<p>Има позитиван став према математици. Решава проблеме применог научног, са увек тачним решењем. Може да конструише и интерпретира графиконе и дијаграме. Решава линеарне једначине и неједначине с једном непознатом. Решава системе линеарних једначина. Израчунава обим и површину геометријских фигура.</p>	<p>She has a positive attitude to mathematics. She always solves problems correctly. She can construct and interpret charts, graphs and diagrams. She solves linear equations and linear inequalities with one unknown value. She solves systems of linear equations. She calculates circumference and</p>
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2

Немачки језик The German Language	Разуме углавном све, ако се говори спорије. Може да учествује у разговору ограниченом на познате теме, уз чешће понављање питања и са грешкама у изговору. Писмено се изражава уз помоћ наставника због ограниченог лексичког фонда и слабије усвојености граматичких структура, /A1/. Вредна је и жели да напредује.	She can understand mostly everything, if the teacher speaks slowly. She can participate in a conversation related to familiar topics; questions must be repeated frequently and she still makes mistakes in pronunciation. She can do written tasks, but she needs teacher's help due to limited lexical fund and grammatical structures /A1/. She is diligent and wants to learn and progress.
Енглески језик The English Language	Учествује у активностима, има изражајне способности читања, познаје вокабулар неопходан за разумевање текста. Способна је да пронађе одговарајућу информацију. Уме да се изражава користећи прошло време у описивању искустава и догађаја. Редовно ради домаће задатке.	She participates in activities; she has expressive reading abilities; she knows the vocabulary necessary for understanding the text. She is able to find the appropriate information. She can describe experiences and events using the past tenses. She does her homework regularly.
Ликовна култура Art	Била је заинтересована за надреално сликарство. Учествовала је у активностима.	She was interested in surreal painting. She participated in activities.
Музичка култура Music	Учествовала је у активностима. Причала је о музичкој популарној сцени своје земље.	She participated in activities. She talked about popular music in her country.



<p>Техничко и информатичко образовање IT Lessons</p>	<p>Покретање програма MS Word, нових докумената, снимање докумената, отварање постојећих докумената; унос текста (куцање текста, исправљање грешака у куцању, кретање кроз текст); покретање програма Internet Explorer; рад са претраживачима, кретање по интернету, проналажење жељених података.</p>	<p>Starting MS Word, writing new documents, saving document, opening existing documents; text input (typing text, correcting typing errors, moving through text); launch Internet Explorer; using browsers, navigating the Internet, finding the needed data.</p>
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Физичко васпитање Physical Education	Због специфичности предмета, није желела да учествује у настави физичког васпитања.	Due to the specificity of the subject, she did not want to participate in the P.E. lessons.
Остали предмети Other Subjects	Присуствовала је мањем броју часова физике, биологије, хемије, географије и историје, али је изучавање било отежано јер се настава одвијала на српском језику.	She attended only a few lessons of physics, biology, chemistry, geography and history, but her studying was very demanding because the lessons were conducted in the Serbian language.

Укључивање у групу	Group Integration
Лепо прихваћена од стране вршњака, али је више желела да буде у „својој“ групи него са одељењем.	Well accepted by peers, but she preferred to be in "her" group, with other immigrant children, rather than in the class.

Интересовања, мотивација...	Interests, motivation...
Ученица показује високу мотивисаност за учење. Посебно интересовање показује за учење математике, физике, енглеског, немачког и српског језика.	The student shows high motivation for learning. She shows special interest in learning mathematics, English, German and Serbian.

Датум/Date: 20.6.2017.

Одељењски  
старшина/Class Teacher

Мира Николић Алексић/Mira Nikolić Aleksić

Директор школе/Principal

Милета Ђоровић/Mileta Đorović Милета Ђоровић/Mileta Đorović

#### Annex IV: Primary School “Jovan Ristić” Borča, the List of Enrolled ASMs

	Name and Surname As they have reported to the police	Gender	Date of Birth	Country of Origin	Grade and Class
1.		F		Avganistan	VIII/1
2.		F		Avganistan	VIII/1
3.		M		Avganistan	VIII/1
4.		F		Avganistan	VI/3
5.		F		Avganistan	VI/3
6.		F		Avganistan	IV/1
7.		F		Avganistan	IV/1
8.		M		Avganistan	IV/2
9.		M		Avganistan	IV/2
10.		M		Siriya	IV/2
11.		F		Avganistan	II/3

**Summer Semester 2017**


*Data Disclosed by the primary school “Jovan Ristić”*

## Вежба

Пишемо реченице:




Л \_ \_

Ово је \_ \_ \_ . Он је \_ \_ \_ . употреби боју 



\_\_\_\_\_

\_\_\_\_\_ . Она \_\_\_\_\_ . употреби боју 



\_\_\_\_\_

\_\_\_\_\_ . \_\_\_\_\_ . употреби боју 

Име и презиме

\_\_\_\_\_

## Školski izveštaj

### School Report

Izveštaj o uključivanju učenika migranta u obrazovni proces  
za mesec: decembar 2016-februar, 2017.

Education Inclusion of Migrant students report for Dec. 2016.-February 2017.

Škola (School name): OŠ "Branko Pešić"

Školska godina (School year): 2016/2017

Sedište (School location): Svetotrojčina 4, Zemun, 11080

Država (Country): Srbija



Ime (Name):

Razred (class): 6

Kroskurikularne veštine Cross-Curricular Skills	Komentari Comments	Ostvareni nivo Level Achieved
<b>Komunikacija</b> <b>Communication</b> <i>(uzimajući u obzir dostignuća učenika vezana za oblast jezika i funkcionalnu pismenost)</i> <i>considering the achievements of students in language and functional literacy</i>	<p>Omaid je zainteresovan za nastavu što zaključujemo na osnovu redovnosti pohađanja i želje za saznanjem koju on iskazuje prilikom prisustva na časovima. Neverbalna komunikacija koja oslikava potrebe, želje i osećanja je na zavidnom nivou iako je pomalo povučen. Poštuje pravila i autoritet te strahuje da u ophođenju ne napravi grešku. Njegov maternji jezik je <i>pašto</i>. Potpuno vlada pismenim i usmenim izražavanjem na maternjem jeziku. Samostalan je u usvajanju stranih jezika (srpskog i engleskog). Koristi vršnjačku podršku prilikom usvajanja sadržaja ali je i pruža. Sarađuje i dvosmerno učestvuje u grupnom radu. Strane jezike koristi prilikom primanja informacija (prepoznavanja, uočavanja bitnog, selekcije, primanja instrukcija...), dok mu je potrebna podrška i pojačan rad iz ovih oblasti kako bi obogatio rečnik i iskazivao ideje, usvojene sadržaje i prezentovao naučeno. Znanje i korišćenje srpskog jezika je na početnom nivou (prepoznaje oba pisma, prepoznaje opšte instrukcije i pozdrave). Znanje i korišćenje engleskog jezika je na srednjem nivou, jer pored prepoznavanja instrukcija, pozdrava i pojmova ume da ga koristi u cilju davanja povratne informacije i uspešnije komunikacije. Preporučuje se pojačan rad na usvajanju oba strana jezika (govorne i pisane komunikacije). <i>Based on his regular attendance and desire for knowledge which he expresses during classes we concluded that Omaid is very interested in school. His nonverbal communication that describes needs, desires and feelings is on high level even though he is a little bit shy. He respects rules and authority so he is afraid not to make mistake in his behavior. His mother tongue is Pashto. He gained academic level in written and spoken skills of his language.</i></p> <p><i>He is independent in acquiring foreign languages (Serbian and</i></p>	<p><b>Srednji nivo</b></p> <p><i>Ka naprednom</i></p> <p><i>Intermediate Level Toward Advanced</i></p>

	<p>English). He uses and gives peer's support while acquiring some curriculum content. He is cooperative and interactive in group work.</p> <p>He uses foreign languages to get information (Identification, insight essential, selection, getting instructions...), though he requires help to enrich vocabulary so that he can express ideas, adopted contents and presents what he has learned.</p> <p>Basic level of Serbian language. ( he recognizes both alphabets – Cyrillic and Latin, he recognizes general instructions and greetings).</p> <p>Intermediate level of English language. Besides recognizing instructions, greetings and terms he can use language to get feedback and better communication.</p> <p>Reinforced work on adopting both languages is advised (spoken and written communication).</p>	
<p><b>Korišćenje matematike</b> <i>Using Mathematics</i></p> <p>(uzimajući u obzir dostignuća iz oblasti matematike i matematičkih znanja)</p> <p>(Considering achievement in Mathematics and Numeracy area of learning)</p>	<p>Ume da razlikuje prave činjenice od informacija. Radi sa podacima. Koristi prirodne brojeve i osnovne računске operacije. Uspešno sabira, oduzima, množi i deli. Koristi se decimalnim brojevima.</p> <p>Merne jedinice iz SI sistema prepoznaje i uspešno koristi prilikom merenja u svakodnevnoj primeni. Ume da izračuna obim i površinu.</p> <p>Matematička znanja funkcionalno koristi prilikom organizacije vremena, računanja udaljenosti, kupovine, razmene novca i određivanja vrednosti valuta.</p> <p>He is able to make differences between facts and information. He works with data. He uses natural numbers and basic calculating operations. He is successful in adding, subtracting, multiplying and dividing. He uses decimal numbers.</p> <p>He is acquaint with SI system of units and successfully uses them in everyday life. He is able to calculate volume and surface. He functionally uses mathematic knowledge while organizing time, calculating distance, shopping, the money exchange and defining currency value.</p>	<p><b>Srednji nivo</b></p> <p>Ka naprednom</p> <p>Intermediate Level Toward Advanced</p>
<p><b>Korišćenje IKT</b> <i>Using ICT</i></p> <p>(uzimajući u obzir postignuća učenika vezana za oblast IKTa i funkcionalnu pismenost)</p> <p>(considering the students' achievements related to the field of ICT and functional literacy)</p>	<p>Poznaje i primenjuje savremena informatička sredstva (računar, mobilni telefon). Ovo je naročito izraženo prilikom pretraživanja informacija i prevodenja teksta. Prepoznaje sigurne sajtove i koristi ih u cilju prikupljanja činjenica. Uspešno analizira i sintetizuje informacije i izražava se u elektronskom obliku, za šta uglavnom koristi društvene mreže i komunikacione programe (Messenger, Skype...).</p> <p>Potrebno je upoznat ga sa osnovnim informatičkim alatima iz Microsoft office palete.</p> <p>Audio-vizuelna sredstva su odličan resurs kod ovog učenika, jer ga dodatno motivišu i pružaju mu priliku da uoči sadržaje na očiglednim sredstvima.</p> <p>He uses modern information technology (computer, mobile phone), especially when he seeks information and translate texts. He knows which sites are safe and uses them in order to collect facts. He successfully analyze and synthesizes information and expresses himself in e-form, where he mostly uses social networks and communicational programs (Messenger, Skype...).</p> <p>He requires help with basic Microsoft Office tools.</p> <p>Audio-visual tools are a great resource for this kind of student, as they further motivate him and provide him the opportunity to observe contents on the obvious means.</p>	



<b>Oblast učenja</b> <i>Areas of Learning</i>	<b>Komentari</b> <i>Comments</i>
<b>Umetnost</b> <i>The Arts</i> <ul style="list-style-type: none"> <li>• <b>Umetnost i dizajn</b> <i>Art and Design</i></li> <li>• <b>Drama</b> <i>Drama</i></li> <li>• <b>Muzika</b> <i>Music</i></li> </ul>	<p>Prepoznaje različite vidove umetničkog izražavanja i njihovu međupovezanost. Prepoznaje doprinos kulture i umetnosti razvoju društva, što često ume da iskoristi prilikom vrednovanja istih. Svestan je međusobnog uticaja kulture, nauke, umetnosti i tehnologije.</p> <p>Izuzetno je otvoren prema novim stilovima u muzici (hip-hop). Uvažava novo umetničko stvaralaštvo i iskazuje želju za sopstvenim iskazivanjem korišćenjem modernog muzike.</p> <p><i>He identifies different forms of the art expression and their correlation. He identifies contribution of culture and arts for the society development, which he often used to express values of the same. He is aware of mutual influence of culture, science, art and technology.</i></p> <p><i>He is very open to the new music styles (hip-hop). He pays respect for new artistic expression and expresses his own desire using modern music.</i></p>
<b>Engleski jezik</b> <i>English</i>	<p>Omaid razume osnovne instrukcije, formalno obraćanje i osnovne pojmove na engleskom jeziku. Uspešno koristi engleski jezik kao alat za usvajanje srpskog jezika. Pruža povratnu informaciju na engleskom ukoliko je rečenica jednostavnija, sa uobičajenim pojmovima. Postavlja pitanja na engleskom, lako komunicira sa nastavnicima i u njegovom slučaju zanemaruje se prazan hod prilikom interakcije.</p> <p>Potrebna je dodatna podrška prilikom izgovora, usvajanja novih pojmova i naročito, prilikom njegovog pisanog izražavanja.</p> <p>Naglašavamo da kombinuje engleski jezik sa IKTom u nastavi što mu umnogome olakšava ispunjavanje postavljenih ciljeva i ishoda.</p> <p><i>Omaid understands basic instructions, formal speech and basic terms in English language. He successfully uses English as a tool for adopting Serbian language. He gives feedback using simple English sentences with well-known terms. He asks questions in English. He communicate with the teachers continuously therefore, there is no idle time during interaction.</i></p> <p><i>He requires support in pronunciation, adopting new terms, especially in writing form.</i></p> <p><i>We emphasize that he combines English language and ICT skills in the class which greatly facilitates him to fulfill set goals and outcomes.</i></p>
<b>Društvene nauke</b> <i>Social science</i> <ul style="list-style-type: none"> <li>• <b>Geografija, Istorija</b> <i>Geography, History</i></li> </ul>	<p>Poznaje osnovne odlike klime i reljefa. Uspešno se orijentiše u prostoru i vremenu i to primenjuje u svakodnevnom životu. Orijentacija na mapi je na zadovoljavajućem nivou. Usvojio je upotrebu kalendara.</p> <p>Poznaje trenutne društvene prilike i prepoznaje političku podelu mape sveta. Usvojio je pojmove: kontinent, država, grad, glavni grad. Svestan je društvenih prilika i razume društvene i međudržavne odnose.</p> <p><i>He knows basic characteristic of climate and relief. He successfully orientates in space and time and uses that in everyday. Orientation on the map is on satiable level. He has learned to use calendar.</i></p> <p><i>He knows current social conditions and political division of the world map. He adopted terms: a continent, a country, a city, the capital. He is aware of social conditions and understands social and inter-state relations,</i></p>
<b>Lični razvoj i preduzetništvo</b> <i>Personal Development and entrepreneurship</i>	<p>Stekao je osnovno obrazovanje u Avganistanu i ima dobar osnov za dalje školovanje i lični razvoj. Koristi trenutnu poziciju u kojoj se nalazi i redovno pohađa nastavu jer je svestan bitnosti daljeg školovanja. Svesno se postavlja u većini situacija i odgovoran je. Ume da iskaže sopstvene stavove, ideje i mišljenje. Jasno je izložio svoje kvalitete ali bi dobro došla savetovanja prilikom profesionalne orijentacije i odabira daljeg razvoja. Voli sport, naročito kriket, ali uzimajući u obzir njegove godine, u ovom trenutku smatramo da je izbor odgovarajuće srednje škole značajniji.</p> <p><i>He acquired elementary education in Afganistan and has good base for further education and personal development. He uses the current opportunity and regularly attends school as he is well aware of importance of further education. In most of the situations he is conscientious and responsible. He expresses his own attitudes, ideas and thoughts. He clearly exhibits his own qualities, skills</i></p>

	<p>need support in the professional orientation and selection of further development. He likes sport, especially cricket, but considering his age we think that at this point choosing appropriate high school is more important.</p>
<p><b>Odgovoran odnos prema zdravlju, ličnoj i opštoj higijeni</b>  <i>Responsible attitude towards health, personal and general hygiene</i></p>	<p>Redovno održava ličnu higijenu i higijenu prostora u kojem boravi. Razume način pravilne ishrane.          Prepoznaje bolesti i ume da zatraži lekarsku pomoć i pruži prvu pomoć.  <i>He regularly maintain personal hygiene and hygiene of the space in which he resides. He understands the ways of proper nutrition.</i>  <i>He recognizes the disease and knows to seek medical attention and provide first aid.</i></p>
<p><b>Odgovoran odnos prema okolini i razvijanje ekološke svesti</b>  <i>Responsible attitude towards the environment and the development of environmental awareness</i></p>	<p>Ponaša se u skladu sa konceptom zdravog i bezbednog okruženja. Pozitivno se odnosi prema resursima.          Posедуje ekološku svest i savestan je prema okruženju.          Zna da napravi razliku između obnovljivih i neobnovljivih izvora energije.          Razume značaj reciklaže i zna da odvoji predmete koji se mogu reciklirati.  <i>He acts accordingly with the concept of healthy and safe environment. He positively refers towards resources.</i>  <i>He has environmental awareness and he is conscientious toward environment.</i>  <i>He makes differences between renewed and non-renewed energy sources.</i>  <i>He understands importance of the recycling and knows to select objects that can be recycled.</i></p>
<p><b>Prirodne nauke:</b>  <i>Science</i></p> <ul style="list-style-type: none"> <li><b>Biologija, hemija, fizika</b>  <i>Biology, Chemistry, Physics</i></li> </ul>	<p>Poznaje strukturu organizacije ljudskog tela.          Poznaje periodni sistem elemenata i osnovne hemijske jednačine.          Zna jedinice za merenje dužine, površine, zapremine i vremena i ume da pretvara veće jedinice u manje.          Upoznat je sa povezanošću prirodnih nauka i njihovom povezanošću sa životom.  <i>He knows the structural organization of the human body.</i>  <i>He knows periodical system of elements and basic chemistry equation.</i>  <i>He knows units for measuring length, surface, volume and time and he is able to convert larger units into smaller ones.</i>  <i>He is familiar with correlation of natural sciences and their correlation with daily life.</i></p>
<p><b>Verska nastava ISLAM</b>  <i>Religious education ISLAM</i></p>	<p>Poštuje svoju religiju i angažuje se na časovima verske nastave.          Redovno odlazi u džamiju.  <i>He respects his religion and he is active in religion lessons. He regularly goes to the mosque.</i></p>



**Interesovanja i sposobnosti (isticanje posebnog talenta- opciono)**

*Interests and skills (emphasize the special talent- optional)*

Ističe sport kao svoje najveće interesovanje. Veoma dobro se oseća prilikom igranja kriketa i fudbala.  
He emphasizes that his greatest interest is sport. He enjoys playing cricket and football.

**Fokus na razvoj (potrebe za podrškom, moguća rešenja...)**

*Focus on Development (support needs, possible solutions ...)*

Pružati mu konstantnu podršku kako bi profesionalna orijentacija zadovoljila njegova interesovanja i sposobnosti.  
Provide him with constant support to make the professional orientation satisfied his interests and abilities.

**Nastavnik:**

*Teacher*

**Direktor:**

*Principal*

**Datum:**

*Date*